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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
ITKIN & SABADASH,

Involuntary Debtor.

Case No. 2:25-bk-11235-NB

Chapter 7

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF ORDER
DISMISSING INVOLUNTARY CASE
[DOCKET NO. 76] AND
MEMORANDUM OF DECISION
[DOCKET NO. 75]; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF GARRY Y.
ITKIN, ELENA GOFMAN, DANIEL J.
McCARTHY AND RON CHILDRESS**

Date: to be set
Time: to be set.
Place: Courtroom 1545

**TO: THE HONORABLE NEIL W. BASON, UNITED STATES BANKRUPTCY
JUDGE, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

On such date and time that the Court may set, which will be the subject of further notice, petitioning general partner Garry Y. Itkin ("Mr. Itkin") will bring on for hearing his Motion for Reconsideration of the Court's Order Dismissing Involuntary Petition that was entered on June 17, 2025 (the "Order," docket no. 76, Exh. H hereto) and its June 16, 2025 Memorandum Decision Dismissing Involuntary Petition (the "Memorandum," docket no. 75, Exh. I hereto), by which he requests that the Court vacate that Order and Memorandum. The Order and

Memorandum were issued by the Honorable Neil W. Bason after hearings on April 22, 2025, and June 3, 2025. The Motion will be brought pursuant to Federal Rule of Civil Procedure 59(e), as made applicable by Federal Rule of Bankruptcy Procedure 9023, which authorizes a motion to alter or amend a judgment, and Federal Rule of Civil Procedure 60, as made applicable by Federal Rule of Bankruptcy Procedure 9024.

Pursuant to Local Bankruptcy Rule 9013-1(4), there are different facts and circumstances that were not shown in opposition to the Alexandar Sabadash's "Motion to Dismiss Involuntary Petition Under FCRP 12(b)(1) and 12(b)(6) or, in the Alternative, Motion for Summary Judgment" (docket no. 8, the "Motion to Dismiss") because (1) Mr. Sabadash raised multiple new arguments and alleged facts in his Reply in support of his Motion to Dismiss to which Mr. Itkin had no opportunity to respond in writing and with evidence, (2) in its Memorandum, the Court also raised new analysis and inferences that were not asserted by Mr. Sabadash to which Mr. Itkin also had no opportunity to respond in writing and with evidence.

Moreover, reconsideration also is required to prevent manifest injustice in that the Court's Memorandum relied upon inadmissible evidence and also did not consider the evidence a light favorable to Mr. Itkin, which was contrary to well-settled case law.

As more fully set forth on the attached Memorandum, the Motion is made on grounds that (1) Mr. Sabadash violated multiple requirements applicable to summary judgment motions, which the Court improperly permitted, including by voluntarily waiving the requirements of the Local Bankruptcy Rules without any request by Mr. Sabadash that the Court do so (thereby denying Mr. Itkin due process) and by submitting inadmissible evidence that the Court based its decision upon without ruling on most of Mr. Itkin's objections to Mr. Sabadash's evidence despite repeated requests from Mr. Itkin's that the Court rule on those objections; (2) perhaps most significantly, the Court applied an incorrect standard in considering Mr. Itkin's evidence by failing to consider that evidence in the light most favorable to Mr. Itkin, by failing to make all reasonable inferences in favor Mr. Itkin and instead improperly weighing and interpreting evidence against Mr. Itkin; (3) the Court minimized the evidence of the Russian Courts' rulings, including the August 6, 2020 Information Summary of the Ninth Arbitration Court of Appeal, which were contrary to Mr.

1 Sabadash's contention that Itkin & Sabadash is not a partnership; (4) having discounted those
2 decisions, the Court also misapplied the doctrine of collateral estoppel; (5) the Court also
3 misapplied the doctrine of collateral estoppel to the Los Angeles Superior Court's November 7,
4 2019 judgment in favor of Elena Gofman; and (6) dismissal was an inappropriate remedy under
5 11 U.S.C. § 305(a).

6 This Motion will be based upon this Notice of Motion and Motion, the attached
7 Memorandum and declarations, the Court's files in this Chapter 7 case, the Court's files in the
8 Chapter 15 case of Golden Sphinx Limited, the transcripts of the April 22, 2025, and June 3, 2025
9 hearings in this case, and such further evidence and arguments of counsel as may be presented in
10 connection with the Motion.

11 In the event the Court schedules the Motion for hearing, Local Bankruptcy Rule 9013-1(f)
12 requires that any response to the Motion must be filed and served upon counsel for Mr. Itkin and
13 the United States Trustee at least 14 days prior to the scheduled hearing.

14
15 DATED: July 1, 2025

HILL, FARRER & BURRILL LLP

16
17 By: /s/ Daniel J. McCarthy
18 Daniel J. McCarthy
19 Attorneys for Petitioning General Partner
20 GARRY Y. ITKIN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Procedural History

1. The State Court Action

Garry Y. Itkin (“Mr. Itkin”), Alexander Sabadash (“Mr. Sabadash”) and other entities are parties to an action pending in the Los Angeles Superior Court, case no. BC647351 (the “State Court Action”). The first cause of action in Mr. Itkin’s second amended cross-complaint sought dissolution of that partnership.

Prior to the trial in the State Court Action, Mr. Sabadash brought a motion for summary judgment. Mr. Itkin presented considerable evidence in showing the existence of that partnership. The supporting documents were marked as trial exhibits. Mr. Sabadash’s motion was denied.

The State Court Action was stayed by this Court’s order (docket no. 42) on September 9, 2022, in case no. 2:20-bk-14320-NB that recognized the foreign liquidation proceeding of Golden Sphinx Limited (“GSL”). Mr Itkin filed a motion for relief from automatic stay. The Court subsequently ruled by Order on March 16, 2023, that the State Court Action was stayed, except as to affirmative causes of action by certain plaintiffs. (Docket no. 70.) The State Court has stayed the State Court Action given that limited relief.

2. The Motion to Dismiss

Mr. Itkin filed the involuntary Chapter 7 petition against Itkin & Sabadash, a California partnership (the “Partnership”) on February 19, 2025.

Mr. Sabadash is the subject of a Chapter 15 proceeding before this Court in case no. 2:23-bk-15574-NB. On March 20, 2025, he filed a “Motion to Dismiss Involuntary Petition Under FRCP 12(b)(1) and 12(b)(6) or, in the Alternative, Motion for Summary Judgment” (docket no. 8, the “Motion to Dismiss”) in this case, which was noticed for hearing on April 22, 2025. It was supported by attached declarations from Michael Zorkin and Andrew Wood and a request for judicial notice (the “Sabadash RJN”).

The Motion to Dismiss violated Local Bankruptcy Rules (“LBRs”). LBR 7056-1(b)(2) requires that a motion for summary judgment be accompanied by a statement of uncontroverted

1 facts and conclusions of law and a proposed summary judgment. Mr. Sabadash failed to file
2 those required documents. The Motion to Dismiss also was not filed at least 42 days before the
3 April 22, 2025 hearing as required by LBR 7056-1(b)(1).

4 LBR 9013-1(c) requires that a motion include: “A written statement of all reasons in
5 support thereof, together with a memorandum of the points and authorities upon which the
6 moving party will rely.” That requirement is reinforced by LBR 9013-1(g)(4), which states:
7 “New arguments or matters raised for the first time in reply documents will not be considered.”

8 The Motion to Dismiss failed to address any of the evidence presented by Mr. Itkin in the
9 State Court Action on the existence of the Partnership.

10 On April 8, 2025, Mr. Itkin filed (1) an Opposition to the Motion to Dismiss (docket no.
11 16); (2) a supporting Request for Judicial Notice (“Mr. Itkin’s RJN,” docket no. 17); (3)
12 Evidentiary Objections to Mr. Zorkin’s declaration, which had attached multiple inadmissible
13 exhibits attached (docket no. 18); and (4) an Objection to the Sabadash RJN (docket no. 19).

14 Mr. Itkin’s Opposition presented evidence to this Court that Mr. Itkin had presented in the
15 State Court Action, but which Mr. Sabadash’s Motion had ignored. Importantly, Mr. Itkin’s
16 Opposition noted the need for the Court to rule on the Evidentiary Objections to Mr. Zorkin’s
17 declaration and the Sabadash RJN, stating:

18 Concurrent with the filing of this Opposition, Mr. Sabadash is filing an Objection
19 to Mr. Sabadash’s RJN and Evidentiary Objections to Mr. Zorkin’s declaration,
20 which should be ruled upon before reaching the merits of the Motion to Dismiss.
In part, that is because the Motion is based upon inadmissible documents and
statements.

21 (Docket no.16, at 2:25-28, emphasis added.)

22 At the April 22, 2025 hearing, Mr. Itkin’s counsel similarly stated:
23 Your Honor, I won’t go through all the evidentiary objections. I think there needs
to be a ruling on them before Your Honor goes any further.

24 (Exh. J, Transcript 4/22/2025, at 12:21-23.)

25 Mr. Sabadash filed a reply on April 15, 2025. (Docket no. 21.)

26 **3. The April 22 and June 3, 2025 Hearings**

27 The Motion to Dismiss came on for hearing on April 22, 2025, at 11:00 a.m. Mr. Zorkin
28 requested and was granted for priority, although the Partnership’s Chapter 7 case was the subject

1 of calendar numbers 7 and 8 of a very busy 23-item 11:00 a.m. calendar. The Court provided its
2 tentative ruling and then stated: “I’m just going to give you a relatively short period of time in
3 which to argue on those issues or persuade me if I’m missing some issues and I should focus on
4 something else.” (Exh. J, Transcript 4/22/2025, at 7:13-16.) The Court then stated: “So Mr.
5 Zorkin, why don’t you take five minutes and address what you think I need to focus on?” (*Id.* at
6 7:17-18.)

7 Mr. Zorkin briefly argued at pages 7-10 of the Transcript. Mr. Itkin’s counsel then argued
8 at pages 11-17 of the Transcript. Mr. Zorkin briefly replied at pages 20-21. After discussing
9 scheduling and other issues, the Court clarified: “no further briefing unless I ask for it... For now,
10 no further briefing and no further papers. No evidentiary issues, no legal briefs.” (*Id.* at 28:6-13.)

11 The hearing was continued to June 3, 2025, at which the Court read and/or paraphrased its
12 21-page tentative ruling, which the Court acknowledged it was still working on. (Exh. K,
13 Transcript 06/03/2025, at 6-23.) Mr. Itkin’s counsel then addressed several procedural issues.
14 (*Id.* at 24- 32.) One issue concerned the lack of any opportunity to respond to the evidence and
15 arguments raised for the first time in Mr. Sabadash’s reply. Mr. McCarthy explained:

16 So regarding the evidence, Your Honor, one of the things that I expressed at the
17 last hearing was my frustration that all the evidence that we had presented in our
18 opposition, which Mr. Sabadash and Mr. Zorkin were familiar with because they
19 were trial exhibits in the state court action and presented with cross-motions for
20 summary judgment weren’t addressed until the reply brief. And I felt that that was
21 unfair to my client. My client had no chance to respond in writing and I made that
22 point to you in my request for permission to file a supplemental brief in which I
23 stated there are a lot of issues that were argued for the first time in the reply brief,
24 but there was one in particular that I thought was very important to bring to your
25 attention, which was the reason for the information summary, which Mr. Zorkin
26 discounted and disparaged.

27 * * * *

28 So anyway, I was frustrated with the lack of opportunity to respond in writing to
what Mr. Zorkin had argued for the first time in his reply brief. And I had a lot to
say about some of that evidence and his responses, which we actually didn’t get
into at the last hearing. We had a very short hearing.

(*Id.* at 25:2-17, 26:5-10.)

Mr. McCarthy also expressed concern over the Court’s tentative ruling, which criticized
Mr. Itkin’s evidence in ways that even Mr. Sabadash had not argued and on which Mr. Itkin also

1 had no opportunity to respond:

2 But I want to note something, Your Honor. You were critical of a lot of Mr. Itkin's
3 evidence in what you just stated, questioning, for example, the -- why would the
4 partnership agreement be worded the way it was, that Mr. Itkin's statement that
partnership had terminated. These are things that he explained in his declaration.

5 But here's what's important about that, Your Honor. Your criticisms of that
6 evidence -- and I understand them -- but they're different than what was argued in
7 the motion or in the reply. So now it's a situation where I didn't have a chance to
8 respond to what Mr. Zorkin said for the first time in the reply and I'm being
presented with your questioning of Mr. Itkin's evidence and also some reliance on
inadmissible evidence submitted by -- by Mr. Zorkin, again without a chance to
respond in writing.

9 (*Id.* at 26:11-27:1.)

10 Further, Mr. McCarthy again asked that the Court ruling on the evidentiary objections and
11 additionally asked that the Court grant the request to file the supplemental brief. (*Id.* at 28:4-8.)

12 The Court continued the hearing to June 17, 2025.

13 **4. The Creditors' Joinders, Proofs of Claim and Mr. Sabadash's** 14 **Objections**

15 Ten creditors filed joinders in the Involuntary Petition. Five joinders were filed on March
16 28, 2025. (Docket nos. 10-14.) They were the subject of Mr. Itkin's RJN. (Docket no. 17.)

17 The other five creditors filed joinders. Progressive Management, Inc., filed a joinder on
18 May 18, 2025. (Docket no. 49.) Jeff Ratner & Associates filed a joinder on May 18, 2025.
19 (Docket no. 50.) Alexey Kurochkin filed a joinder on May 19, 2025. (Docket no. 51.) Atabek
20 & Co. filed a joinder on May 20, 2025. (Docket no. 60.) Aleksandr Grant filed a joinder on June
21 2, 2025. (Docket no. 64.) Thus, every creditor who filed a claim filed a joinder in the petition.

22 The same ten creditors filed proof of claims nos. 1 to 11. Claim nos. 2 and 3 (filed by
23 Jeff Ratner and Associates, Inc.) were duplicative. Claims nos. 1 to 10 also were the subject of
24 Mr. Itkin's RJN. (Docket no. 17.) Mr. Sabadash did not object to the Court taking judicial
25 notice of the claims for the truth of the matters stated in those claims, which included that they
26 held claims against the Partnership. Aleksandr Grant filed proof of claim no. 11 on June 2, 2025.
27 The ten verified claims were independent evidence of the fact that there was a partnership
28

1 between Mr. Itkin and Mr. Sabadash.

2 For the obvious purpose of being able to assert that proof of claim nos. 1 to 10 should not
3 be deemed allowed under 11 U.S.C. § 502(a), Mr. Sabadash filed a single objection to those
4 claims shortly before the April 22, 2025 hearing on April 16, 2025. (Docket no. 23.) The
5 objection violated Local Bankruptcy Rule 3007-1 and Federal Rule of Bankruptcy Procedure
6 3007 in numerous respects. It was not noticed for a hearing. It did not list the claim numbers. It
7 did not have copies of the claims attached. The claims were not similarly situated, so a single
8 objection was improper. No supporting evidence was attached. No notice of claims objection
9 was served.

10 At the April 22, 2025 hearing, the Court provided Mr. Sabadash an opportunity to correct
11 these errors. It required proper claims objections to be filed by April 30, 2025, and it scheduled
12 the objections for hearing on June 3, 2025.

13 Mr. Sabadash filed objections to claims nos. 1 to 10 on April 30, 2025. (Docket nos. 25 to
14 33.) They each were supported by a declarations from Mr. Zorkin.

15 Each of the nine creditors filed oppositions to the objections on May 20, 2025 (docket nos.
16 52-59.) All of the oppositions were supported by attached declarations. A declaration of Elena
17 Gofman was separately filed in support of all the oppositions. (Docket no. 61.) The claim of
18 Aleksandr Grant was not objected to.

19 At the June 3, 2025 hearing, the Court did not rule on the claims objections. Instead, it
20 continued the hearing to June 17, 2025.

21 **5. The Court's June 16, 2025 Memorandum of Decision and Its**
22 **June 17, 2025 Dismissal Order**

23 On June 16, 2025, the Court entered a 23-page Memorandum of Decision Dismissing
24 Involuntary Petition. ("Memorandum," docket no. 75, Exh. I.) On June 17, 2025, it also entered
25 an Order Dismissing Involuntary Petition (the "Dismissal Order, docket no. 76, Exh. H.) A
26 notice of dismissal was entered on the same day. (Docket no. 77.) The Court did not close the
27 case. Instead, it retained jurisdiction under LBR 1017-1(f).

28 The Memorandum will be discussed in greater detail below. At this point, this Motion

1 will note what the Memorandum did not do.

2 The Court stated that it had reviewed ten of the eleven proofs of claim (not no. 11), the
3 claims objections, the oppositions to those objections, the omnibus reply, and the creditors'
4 joinders in the petition. (Docket 75, at 4:23-5:5.) The Court did not rule upon those objections.

5 Notwithstanding Mr. Itkin's requests, the Court's Memorandum also did not rule upon (1)
6 most of Mr. Itkin's Evidentiary Objections to Mr. Zorkin's declaration and its attached exhibits;
7 and (2) Mr. Itkin's Objection to the Sabadash RJN. To the contrary, as explained below, the
8 Court's Memorandum actually relied upon plainly inadmissible evidence in concluding that the
9 existence of the Partnership was in bona fide dispute.

10 The Court, however, granted Mr. Itkin's request to file a supplemental brief on the limited
11 issue of the meaning of the Information Summary, which Mr. Sabadash's reply in support of his
12 Motion to Dismiss had improperly disparaged as "some sort of a summary of the case" and which
13 incorrectly asserted "the Russian appellate court made no findings as to the existence of the
14 partnership." (Docket no. 21, at 7:20-8:5.) The Court, however, did not rule upon Mr. Itkin's
15 request for a further opportunity to respond to the new evidence and argument submitted by Mr.
16 Sabadash for the first time in his reply in support of his Motion to Dismiss, which Mr. Itkin stated
17 as follows in the supplemental brief that the Court permitted:

18 In his Reply in support of the Motion to Dismiss, Mr. Sabadash addressed the
19 documentary evidence for the first time although he was well aware of it from the
20 State Court action, thereby intentionally denying Mr. Itkin an opportunity to reply
21 in writing to many false statements and arguments by Mr. Sabadash. (Docket no.
22 21.) At the April 22, 2025 hearing on the Motion to Dismiss at which Mr.
Sabadash's counsel requested priority, the Court instructed the parties each to
argue no longer than five minutes, which also provided Mr. Itkin little opportunity
to respond to all of those false statements and arguments.

23 While Mr. Itkin would like an adequate opportunity to fully respond in writing to
24 all of those false statements and arguments that were made for the first time in Mr.
Sabadash's Reply in violation of Local Rule 9013-1(c)(3)(A), there is one very
crucial issue that Mr. Itkin believes this Court must consider. (Footnote)

25 That issue concerned the ruling by the Ninth Arbitration Court of Appeal in Russia
26 that Itkin and Sabadash was a partnership, which was a judicial proceeding in
27 which Mr. Sabadash very actively and directly participated and argued the issue
before four courts in Russia—losing at every turn.

28 (Docket no. 45, Exh. A (Supplement Brief), at 2:20-3:6, emphasis added.)

1 Instead, the Court viewed Mr. Itkin's request for leave to file a supplemental brief on the
2 limited issue of the nature of the Ninth Arbitration Court of Appeal's August 6, 2020 Information
3 Summary as conduct that somehow "sanitized" Mr. Sabadash's violations of the Local
4 Bankruptcy Rules regarding motions for summary judgment. In that regard, the Court stated:

5 But analyzing the motion under Rule 56 does not prejudice Mr. Itkin, because as
6 set forth above this Court has considered Mr. Itkin's supplemental brief. That brief
7 was filed on May 1, 2025 – 42 days after the filing of Mr. Sabadash's motion on
8 March 20, 2025. Under the Local Bankruptcy Rules, Mr. Itkin is entitled to a
9 period of only 21 days to respond to a Rule 56 motion. LBR 7056-1(c)(1).
10 Therefore, Mr. Itkin's response time has not been shortened.

11 (Docket no. 75, at 5:12-17.)

12 The Court, however, further absolved Mr. Sabadash of those violations in going on to hold
13 that "this Court has the authority to 'waive the application of any Local Bankruptcy Rule in any
14 case or proceeding ... in the interest of justice,' citing the need for a prompt decision on an
15 involuntary petition ((Docket no. 75, at 5:17-23)

16 **B. Summary of Argument**

17 The Court should reconsider and vacate its June 17 Dismissal Order and its June 16
18 Memorandum for at least six reasons. First, Mr. Sabadash violated multiple requirements
19 applicable to summary judgment motions, which the Court improperly permitted, including by
20 voluntarily waiving the requirements of the Local Bankruptcy Rules without any request by Mr.
21 Sabadash that the Court do so (thereby denying Mr. Itkin due process) and by submitting
22 inadmissible evidence that the Court based its decision upon without ruling on Mr. Itkin's
23 objections to Mr. Sabadash's evidence.

24 Second, the Court applied an incorrect standard in considering Mr. Itkin's evidence by
25 failing to consider that evidence in the light most favorable to Mr. Itkin, by failing to make all
26 reasonable inferences in favor Mr. Itkin and instead improperly weighing and interpreting
27 evidence against Mr. Itkin.

28 Third, the Court minimized the evidence of the August 6, 2020 Information Summary of
the Ninth Arbitration Court of Appeal and the other Russian Court decisions that were contrary to
Mr. Sabadash's contention that Itkin & Sabadash is not a partnership.

1 Fourth, having discounted the Ninth Arbitration Court of Appeal's August 6, 2020
2 Information Summary and the other Russian Court decisions, the Court misapplied the doctrine of
3 collateral estoppel to those rulings. Mr. Sabadash is in privity with the Partnership and, therefore,
4 is bound under California law to the Russian Court's ruling that the Partnership existed. The
5 Court's Memorandum ignored law in that regard that Mr. Itkin cited in his Opposition to the
6 Motion to Dismiss.

7 Fifth, after incorrectly minimizing Mr. Sabadash's participation in Ms. Gofman's Los
8 Angeles Superior Court Action in which he asserted by way of ex parte application that the
9 Partnership did not exist, the Court also misapplied the doctrine of collateral estoppel to the
10 judgment in that action.

11 Sixth, dismissal was an inappropriate remedy under 11 U.S.C. § 305(a).

12 **II. ARGUMENT**

13 **A. Applicable Standard**

14 The requirements for reconsidering a final order or judgment are similar. See Fed. R. Civ.
15 P. Rules 59(e) and 60(b), made applicable to bankruptcy courts pursuant to Federal Rules of
16 Bankruptcy Procedure 9023 and 9024. So too are the requirements for reconsidering the denial of
17 a motion in bankruptcy court. See Local Bankruptcy Rule 9013-1(l).

18 Federal Rule of Civil Procedure 59(e) states: "A motion to alter or amend a judgment
19 must be filed no later than 28 days after the entry of the judgment." By this Motion, Mr. Itkin
20 seeks to alter the Order and Memorandum.

21 "A motion for reconsideration should not be granted, absent highly unusual
22 circumstances, unless the district court is presented with newly discovered evidence, committed
23 clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v.*
24 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). Reconsideration may also be granted "as necessary
25 to prevent manifest injustice." *Navajo Nation v. Confederated Tribes & Bands of the Yakima*
26 *Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003). "There may also be other, highly unusual,
27 circumstances warranting reconsideration. *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS,*
28 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993),

**B. The Court Allowed Mr. Sabadash to Violate Applicable Rules, and It
Misapplied the Standards Governing Summary Judgment Motions**

The Court chose to treat the Motion to Dismiss as a motion for summary judgment, which meant that the rules and standards applicable to summary judgment motions were required to be followed. Mr. Sabadash did comply with those rules and standards. Mr. Itkin respectfully submits that the Court overlooked or ignored those violations.

1. Mr. Sabadash Impermissibly Violated Applicable Rules

As already noted, Mr. Sabadash's Motion to Dismiss violated LBR 7056-1(b)(2), which require that a motion for summary judgment be accompanied by a statement of uncontroverted facts and conclusions of law and a proposed summary judgment. He also violated LBR 7056-1, which requires the motion to be filed at least 42 days before the April 22, 2025 hearing.

As also already noted, the Court sanitized this violation by noting that Mr. Itkin had filed a request for leave to file a supplemental brief on the narrow issue of the nature of the "Information Summary" that Mr. Sabadash had disparaged. The fact that this request was filed 42 days after the Motion clearly did not provide Mr. Itkin the period he was entitle to have in opposing the Motion.

As quoted above, the Court's Memorandum noted that it could "waive the application of any Local Bankruptcy Rule in any case or proceeding ... in the interest of justice," which was relief that Mr. Sabadash had not even requested. The Court did not expressly waive the application of the LBRs, although its Memorandum perhaps impliedly did so:

Finally, under Rule 1001, "[w]hen a petition in an involuntary case is contested, the court must: (1) rule on the issues presented *at the earliest practicable time*; and (2) *promptly* issue an order for relief, dismiss the petition, or issue any other appropriate order" (emphasis added).

(Docket no. 75, at 5:20-23.)

The issue of whether it was appropriate to waive the requirements of the LBRs, however, was not even briefed by any party because it was not requested by Mr. Sabadash. Instead, the Court volunteered this waiver. The salient issue is whether the provisions of applicable rules justified that waiver. The quote in the Court's Memorandum is from Federal Rule of Bankruptcy

1 Procedure 1013(a), not Rule 1001. This is Mr. Itkin's first opportunity to brief that issue. He
2 respectfully submits that the waiver was unjustified for at least four reasons.

3 First, neither the Court nor Mr. Sabadash explained why a denial of summary judgment
4 and permission for Mr. Sabadash to properly file the motion in compliance with the LBRs would
5 have prejudiced Mr. Sabadash, Mr.. Itkin or the ten creditors who had filed claims and had joined
6 the Involuntary Petition. In fact, the Court had provided Mr. Sabadash time to comply with the
7 rules applicable to his objections to claim. And the Court clearly was cognizant of the
8 requirement of prejudice relating to rules violations when it held that Mr. Itkin supposedly was
9 not prejudiced by the violations.

10 Second, there are no facts that suggest that any such prejudice would have occurred from
11 delay. Mr. Sabadash (who is in prison in Russia) clearly would not be prejudiced if the process to
12 decide a properly-filed and noticed summary judgment motion was delayed for two or three
13 months. Mr. Itkin was stayed from pursuing his dissolution cause of action in the State Court
14 Action, so he could not affect the Partnership in that Action. The Partnership is not an operating
15 business. It was not incurring debt during an involuntary gap period in which creditors of an
16 operating company might be discouraged to extend credit. "Creditors who extend credit during
17 the 'gap' period between the filing and the order for relief receive some, but not full, protection
18 for their claims." 9 *Collier on Bankruptcy* (16th ed.), ¶ 1013.02. The Partnership had no need
19 for a quick resolution, as in many cases. "In general, it is in the debtor's interest to resolve
20 promptly the issues and either have the case dismissed or an order for relief entered so that the
21 uncertainty about the debtor's future is reduced." 9 *Collier on Bankruptcy* (16th ed.), ¶ 1013.02.

22 The purpose of F.R.B.P. 1013(a) was explained in *In re Taub*, 439 B.R. 261, 270 (Bankr.
23 E.D.N.Y. 2010), as follows:

24 The purpose of this rule is "the avoidance, to the extent possible, of the
25 consequences of the involuntary petition in the absence of the entry of an order for
26 relief [,]" which may include "loss of credit standing, a chilling effect on the
27 willingness of creditors and third parties to transact business in the ordinary
28 course, and possible public embarrassment." *In re Immudyne, Inc.*, 218 B.R. 860,
862 (Bankr.S.D.Tex.1998) (citing *In re Reid*, 773 F.2d 945 (7th Cir.1985)). The
rule "recognizes that the interests of both the debtor and the creditors are best
served by prompt resolution of the issues raised by an involuntary bankruptcy

petition.” 9 COLLIER ON BANKRUPTCY ¶ 1013[02] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.).

None of these factors are present in this case. Indeed, here 10 creditors filed claims and joined the petition, which clearly suggests that they also had no expedient need for the Involuntary Petition to be quickly ruled upon and dismissed.

Third, there is the notion that it is more important to get it right. The supposed need for expediency does not warrant a “rush to justice.”

Fourth, and perhaps most importantly, case law contradicts the Court’s conclusion. In *In re Leong P’ship*, 2018 WL 1463852, at *3 (B.A.P. 9th Cir. Mar. 23, 2018), aff’d, 788 F. App’x 539 (9th Cir. 2019), which Mr. Sabadash and the Court relied upon, Mr. Leong filed a summary motion “[a]fter an unsuccessful attempt to obtain dismissal of the involuntary petition,” which certainly supports the notion that Mr. Sabadash’s Motion to Dismiss should have been denied and Mr. Sabadash should have required to file a proper summary judgment motion, as the objecting general partner was required to do in the *Leong Partnership* case. As discussed below, that decision is not controlling in this case, but it actually does provide guidance on the proper procedure for seeking dismissal of an involuntary petition.

Evidentiary hearings sometimes are required in involuntary cases, which contradicts the notion of unnecessary expediency. “Federal Rule of Bankruptcy Procedure 1013(a) requires prompt action on an involuntary petition, but also recognizes that if the debtor or non-joining partner contests the petition, a trial and perhaps pre-trial discovery may be necessary before the issues can be resolved.” 9 *Collier on Bankruptcy* (16th ed.), ¶ 1013.02. The Court in *In re QDOS, Inc.*, 607 B.R. 338, 346 (B.A.P. 9th Cir. 2019), similarly observed:

The “earliest practicable time” is when the bankruptcy court has “sufficient information to resolve the conflict” before it. *Hayes v. Rewald (In re Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.)*, 779 F.2d 471, 475 (9th Cir. 1985). Often the bankruptcy court will acquire this information at trial.

Where trial is required to adjudicate an involuntary petition, Rule 1018 incorporates many procedural Rules and expressly provides that references to adversary proceeding therein include a reference to a proceeding to contest an involuntary petition. Fed. R. Bankr. P. 1018.

The *QDOS* Court reversed the bankruptcy court’s dismissal of an involuntary petition. It

1 further noted: “In short, Rule 1018 makes clear that resolution of a contested involuntary petition
2 should proceed with the discovery and disclosures typical in an adversary proceeding, but Rule
3 1013(a) mandates that the process move speedily.” *In re QDOS, Inc.*, 607 B.R. at 346.

4 In other words, the *QDOS* Court recognized that rules should be followed rather than cast
5 aside in the name of expediency.

6 **2. Mr. Sabadash Violated the Requirement of Admissible**
7 **Evidence**

8 Under LBR 9013-1(c), the motion was required to provide “all reasons in support thereof,
9 together with a memorandum of the points and authorities upon which the moving party will
10 rely.” FRCP 56(c)(4) states: “An affidavit or declaration used to support or oppose a motion must
11 be made on personal knowledge, set out facts that would be admissible in evidence, and show that
12 the affiant or declarant is competent to testify on the matters stated.” See *In re Aquaslide ‘N’*
13 *Dive Corp.*, 85 B.R. 545, 548 (B.A.P. 9th Cir. 1987) (“If the trial court is to consider these
14 [affidavits] as raising an issue of fact so as to preclude summary judgment, the affidavits must
15 conform with the admissibility rules for summary judgment. They must be based on personal
16 knowledge and set forth facts admissible in evidence.”)

17 The Motion was supported by Mr. Zorkin’s declaration, which itself was inadmissible in
18 certain respects, but more importantly it had attached multiple exhibits that also were
19 inadmissible. In *In re Aquaslide ‘N’ Dive Corp.*, 85 B.R. at 548, an opposition to a summary
20 judgment motion was supported by an attorney, who lacked personal knowledge of the veracity of
21 deposition testimony that he attached as an exhibit. The Court held:

22 The affidavit by the Grzybowski's attorney, William Cannon, is not based on
23 personal knowledge, nor does Mr. Cannon make any statement to that effect.
24 Rather, he incorporates Mr. Grzybowski's deposition by reference. In that
25 deposition Mr. Grzybowski stated he thought the slide was manufactured by “Slide
26 ‘N’ Dive” according to the box in which the slide came. Since Mr. Cannon did not
27 see the box, he has no personal knowledge as to what was printed on the box.
28 Affidavits by attorneys which do not comply with the personal knowledge
requirement cannot be used in opposition to a summary judgment motion.
(Citations.) An affidavit not based on personal knowledge is to be disregarded
when considering a summary judgment motion. (Citation.) The affidavit of Mr.
Cannon is not based on personal knowledge and cannot be considered by a court
evaluating a summary judgment motion. Since it is not admissible, the affidavit
cannot be used to raise an issue of fact. (Citation.)

1 *Id.* at 548, emphasis added.

2 Mr. Itkin filed Evidentiary Objections to Mr. Zorkin's declaration and most of the
3 attached exhibits. (Docket no. 18.) The Motion also was supported by a Request for Judicial
4 Notice that improperly requested judicial of four documents (three declarations and an answer
5 that were filed in the State Court Action). Mr. Itkin also filed an objection to the Sabadash RJN.
6 (Docket no. 19.) The objection explained that the Sabadash RJN merely asked that judicial notice
7 be taken of documents, rather than of any "adjudicative facts" under Federal Rule of Evidence
8 201(a). The objection to the Sabadash RJN further explained that the documents were
9 inadmissible hearsay and that judicial notice of documents filed in another court are improper for
10 the truth of the matters stated.

11 Like the lawyer's declaration in *In re Aquaslide 'N' Dive Corp.*, the inadmissible portions
12 of the Zorkin declaration, the documents attached thereto and all four documents attached to the
13 Sabadash RJN should not have been considered by this Court in evaluating Mr. Sabadash's
14 summary judgment motion. Since they were not admissible, they could not be invoked to "raise
15 an issue of fact" in opposition to the Involuntary Petition.

16 Mr. Sabadash violated the requirement that the Motion be supported by admissible
17 evidence. Notwithstanding Mr. Itkin's objections to the Zorkin Declaration and the Sabadash
18 RJN, Mr. Itkin's request in his Opposition to the Motion to Dismiss that the Court rules on those
19 objections first before considering the Motion, and his counsel's request at the April 22 and June
20 3, 2025 hearing that the Court rule on the objections, the Court did not do so at either hearing or
21 in its June 16, 2025 Memorandum, except in a few respects noted below.

22 As explained below, the lack of admissible evidence had at least three consequences.
23 First, without such evidence, Mr. Itkin did not have a burden to oppose the inadmissible evidence.
24 Second, the Motion could not be granted based upon such inadmissible evidence. Third, and
25 perhaps most importantly, the Court improperly relied upon that inadmissible evidence.

26 **3. The Standard Applicable to Review of Evidence in Opposition**
27 **to a Summary Judgment Motion**

28 As noted above, Mr. Itkin's counsel complained at the June 3, 2025 hearing that the Court

1 was interpreting Mr. Itkin's evidence in a manner not argued by Mr. Sabadash and in a manner
2 that afforded Mr. Itkin no opportunity to respond. The standard for interpreting and applying
3 evidence in opposition to a summary judgment motion is well-settled. Citing Supreme Court
4 authority, the Court's Memorandum explained: "The evidence and inferences therefrom must be
5 viewed in the light most favorable to the non-moving party." (Docket no. 75, at 6:21-23.)

6 Mr. Sabadash's reply in support of his Motion to Dismiss, however, ignored this
7 standard. Instead, it argued that he had contrary (albeit inadmissible) evidence and (without any
8 evidence) he speculated that Mr. Itkin's evidence must be the product of forgery and even a
9 conspiracy with a Russian attorney named Elena Goffman.

10 As explained below, the Court similarly chose not view Mr. Itkin's evidence "in the light
11 most favorable" to him.

12 **C. Mr. Itkin's Evidentiary Objections to Mr. Zorkin's Declaration and**
13 **His Objection to the Sabadash RJN Should be Ruled Upon and**
14 **Granted**

15 "[T]he threshold issue of admissibility must be resolved before determining whether or
16 not unresolved questions of fact exist." *United States v. Hangar One, Inc.*, 563 F.2d 1155, 1157
17 (5th Cir. 1977). Mr. Itkin filed timely Evidentiary Objections to Mr. Zorkin's Declaration and a
18 timely Objection to the Sabadash RJN. The merely filing of those Objections necessitated a
19 ruling. As explained above, Mr. Itkin's Opposition to the Motion to Dismiss requested that the
20 Court first rule on those Objections for an obvious reason. Without admissible evidence, the
21 Motion could not be granted. Mr. Itkin's counsel repeated that request at the April 22 and June 3,
22 2025 hearings. By this Motion, Mr. Itkin renews his request that the Court rule upon all of those
23 Objections. In determining this Motion, the Court's reconsideration of its Dismissal Order and
24 Memorandum must start with the admissible evidence that formed the foundation of its ruling.

25 **D. The Court Relied Upon Inadmissible Evidence**

26 Mr. Itkin submitted the "Minutes of the Meeting of Partners of Simple Partnership 'Itkin
27 & Sabadash'" (the "Partnership Minutes") dated February 12, 2004, as written confirmation of
28 the Partnership. As explained in the Court's Memorandum, Mr. Itkin described the circumstances

1 under which the Partnership was formed and the reason for needing written confirmation in 2004,
2 and the Court quotes the Partnership Minutes. (Docket no. 75, at 17:8-18:10.)

3 The Court then quotes Mr. Sabadash's declaration from the State Court Action in which
4 he disagreed that there was a partnership and asserted that his signature on the document is a
5 forgery. (Docket no. 75, at 18:11-26.) The Court noted that the declaration was in the record at
6 (dkt. 8-1, Ex. 3, PDF pp. 39-40 of 86). (*Id.* at 18:26-27.) Based upon that, the Court concluded
7 that Mr. Sabadash had shown the existence of a bona fide dispute:

8 Mr. Sabadash is required only to show that a bona fide dispute exists either as to
9 the existence of the Itkin & Sabadash partnership or as to the validity of the claims
10 asserted against the partnership. Mr. Sabadash has met that standard. He has
11 shown that there is no genuine dispute that there does in fact exist a bona fide
12 dispute as to both the existence of the partnership and the validity of the claims
13 asserted against the alleged partnership.

14 (Docket no. 75, at 19:2-7.)

15 In footnote 4 on pages 18-19 of the Memorandum, the Court ruled on Mr. Itkin's
16 evidentiary objection to Mr. Sabadash's declaration as follows:

17 Mr. Itkin objects to this testimony as inadmissible hearsay. That objection is
18 overruled. The testimony is offered not to establish the truth of the matters set
19 forth therein, but instead to demonstrate the existence of a bona fide dispute as to
20 the existence of the Itkin & Sabadash partnership (as distinguished from a
21 frivolous dispute, concocted at the last minute).

22 Mr. Sabadash's declaration only can demonstrate "the existence of a bona fide dispute as
23 to the existence of the Itkin & Sabadash partnership" if it is accepted for "the truth of the matters
24 stated" in the declaration.¹ There is no known exception to the hearsay rule or to the
25 requirements of admissible evidence under Rule 56(c) that allows for the admissibility of hearsay
26 to place a fact in dispute. Inadmissible testimony may not be considered to create an issue of fact.
27 A statement is not hearsay if offered for some purpose other than to prove the truth of the matter
28 asserted (e.g., to show only that the statement was made or to show a certain effect on the hearer
or reader). *Drew v. Equifax Information Services, LLC*, 690 F3d 1100, 1108 (9th Cir. 2012) (out

¹ Mr. Itkin objected to this declaration, which is Exhibit 3 to Mr. Zorkin's declaration, on grounds of hearsay. (Docket no. 18, at 2:12-18.) For the reasons explained above, Mr. Itkin also objected to Mr. Sabadash's request that the Court take judicial notice of Exhibits 2, 3, 4 and 5 to Mr. Zorkin's declaration, one of which was Mr. Sabadash's declaration that the Court relied upon in its Memorandum. (Docket 19.)

1 of court statement used to show a statement was made, nor truth of statement). Mr. Sabadash did
2 not offer the declaration for any such purpose. He offered it to prove alleged forgery.

3 The Court actually highlights this in going on to explain:

4 [Mr. Sabadash] must show only that there is no genuine dispute that the existence
5 of the partnership, or the claims against the partnership, are in fact subject to a
6 bona fide dispute. Put another way, he must show that there is a genuine issue of
material fact as to either the existence of the Itkin & Sabadash partnership or its
liability for damages.

7 (Docket 75, at 19:13-17, emphasis added.)

8 Mr. Sabadash cannot show “there is a genuine issue of material fact as to either the
9 existence of the Itkin & Sabadash partnership or its liability for damages” with an inadmissible
10 declaration that is not accepted for the truth of the matters stated in it.

11 **E. Because It Was Based Upon Inadmissible Evidence, Mr. Sabadash’s**
12 **Motion for Summary Judgment Should Have Been Denied**

13 F.R.C.P. 56(c)(2) states: “A party may object that the material cited to support or dispute a
14 fact cannot be presented in a form that would be admissible in evidence.” Mr. Itkin objected to
15 the inadmissible evidence in Mr. Zorkin’s declaration and the Sabadash RJN.

16 When the Court considers and rules on Mr. Itkin’s Evidentiary Objections to Mr. Zorkin’s
17 Declaration and his Objection to the Sabadash RJN, it will be apparent that Mr. Sabadash lacked
18 admissible evidence to support the Motion to Dismiss. That has two implications.

19 First, without admissible evidence required under Rule 56(c)(4), the Motion should have
20 been denied. There are limited circumstances in which a moving party need only establish that
21 the opposing party (with the burden of proof) lacks evidence to support a material element of its
22 claim. Here, Mr. Itkin admittedly had the burden of showing that the existence of the Partnership
23 (as stated under oath in the Involuntary Petition) was not in bona fide dispute. Mr. Sabadash’s
24 Motion could have been based upon a showing that Mr. Itkin completely lacked evidence to show
25 that. “[A] party seeking summary judgment always bears the initial responsibility of informing
26 the district court of the basis for its motion, and identifying those portions of ‘the pleadings,
27 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
28

1 any,' which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*
2 *Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986).

3 In *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1105 (9th Cir.
4 2000), the Court explained:

5 In a typical case, in order to carry its initial burden of production by pointing to the
6 absence of evidence to support the nonmoving party's claim or defense, the
7 moving party will have made reasonable efforts, using the normal tools of
8 discovery, to discover whether the nonmoving party has enough evidence to carry
9 its burden of persuasion at trial....“Even after *Celotex* it is never enough simply to
10 state that the non-moving party cannot meet its burden at trial.” (Citation.)

11 Mr. Sabadash’s Motion, however, did not present any admissible evidence that
12 demonstrated that Mr. Itkin was unable to show the lack of a bona fide dispute as to the existence
13 of the Partnership.

14 Second, the burden never shifted to Mr. Itkin to present any evidence in opposition to the
15 Motion, although he did so. “If a moving party fails to carry its initial burden of production, the
16 nonmoving party has no obligation to produce anything, even if the nonmoving party would have
17 the ultimate burden of persuasion at trial. (Citations.) In such a case, the nonmoving party may
18 defeat the motion for summary judgment without producing anything.” *Nissan Fire & Marine*
19 *Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d at 1102–03.

20 In short, the Motion should have been denied.

21 **F. The Court Did Not Consider Mr. Itkin’s Evidence in a Light Most**
22 **Favorable to Him, but Instead Construed It Against Him**

23 The Court’s Memorandum is critical of Mr. Itkin’s evidence, without considering it in a
24 light most favorable to him. Again, the Court acknowledged that: “The evidence and inferences
25 therefrom must be viewed in the light most favorable to the non-moving party.” (Docket no. 75,
26 at 6:21-23.) “Summary judgment is appropriate only if, taking the evidence and all reasonable
27 inferences drawn therefrom in the light most favorable to the non-moving party, there are no
28 genuine issues of material fact and the moving party is entitled to judgment as a matter of law.”
Furnace v. Sullivan, 705 F.3d 1021, 1026 (9th Cir. 2013) (quoting *Torres v. City of Madera*, 648
F.3d 1119, 1123 (9th Cir. 2011)); see *Orloff v. Cleland*, 708 F.2d 372, 375 (9th Cir. 1983).

1 First, the Court questions the existence of the Partnership based upon the lack of a written
2 agreement when the Partnership was formed, given the promise of \$4 million per year and Mr.
3 Itkin's reluctance to move to Russia, especially given that Mr. Itkin is an accountant. (Docket no.
4 75, at 19:22-20:15.) In not considering the evidence in a light most favorable to Mr. Itkin, the
5 Court overlooks the facts that:

6 • Between 1990 and 1998, Mr. Sabadash and Mr. Itkin and their spouses) "became good
7 friends." (Docket 16, at 34:12-17).

8 • Contrary to the Court's statement, Mr. Sabadash did not "guarantee[] Mr. Itkin a
9 minimum income of \$4 million per year" (docket no. 75, at 2:6-7, emphasis in original), but
10 instead Mr. Itkin stated: "A. Sabadash stated he was so confident we would succeed that he
11 promised me a minimum income of \$4,000,000 per year, which I could either draw upon, or
12 reinvest into the partnership as I saw fit." (*Id.* at 35:11-13.) A "promise" is not a "guarantee."

13 • That income did not materialize at first; instead "[a]t its earliest stages, the Partnership
14 generated barely any revenue, and little in the way of comfort" and "when I first moved to St.
15 Petersburg, A. Sabadash and I lived together in a run-down, one-bedroom apartment that A.
16 Sabadash informed me was owned by his mother-in-law" and "when I did rent my own
17 apartment, that apartment was even more squalid. (*Id.* at 35:26-36:6);

18 • Mr. Itkin and Mr. Sabadash acted like partners in the manner agreed to by them, with
19 Mr. Itkin forming the companies, Mr. Itkin being appointed as a director and officer, and the
20 Partnership assets being held in this manner. (*Id.* at 36:11-16);

21 • In late 1999, Mr. Sabadash and Mr. Itkin joined the International Union of Economists
22 ("IUE"), as partners and splitting the \$15,000 registration fee with Mr. Sabadash paying \$10,000
23 and Mr. Itkin paying \$5,000 per their agreed upon partnership share shares of 2/3 and 1/3. (*Id.* at
24 36:19-28.)

25 • Both of them drew on Partnership accounts. (*Id.* at 37:1-4.)

26 • Both of them held "ourselves out as partners to employees, business associates,
27 governmental officials, and others." (*Id.* at 37:5-7.)

28 In other words, this Partnership between friends was entered into without an agreement

1 and worked well from approximately 1999 to 2003 without a written agreement. Only when they
2 met Russian attorney Elena Gofman, f/k/a Elena Nikolayevna Vasilieva, in early 2004 did they
3 act on her recommendation in conducting a meeting on February 12, 2024, that resulted in the
4 Partnership Minutes, which Mr. Itkin saw Mr. Sabadash sign. (Docket no. 16 at 37:21-38:6;
5 Gofman Decl., ¶ 10; Suppl. Itkin Decl., ¶ 6.)

6 Interpreting this evidence in the “light most favorable” to Mr. Itkin, it is credible that the
7 Partnership between friends was entered into without a written agreement.² (Suppl. Itkin Decl., ¶
8 12.) They trusted each other at the time. (*Id.*) Significantly, neither Mr. Sabadash nor the Court
9 dispute that a partnership agreements may be verbal and need not be in writing. In light of no
10 contrary admissible evidence, Mr. Itkin established that there is not a bona fide dispute as to the
11 existence of the Partnership.

12 *Second*, in further questioning Mr. Itkin’s declaration, the Court doubts that Mr. Itkin’s
13 “academic background” and his “professional experience, business reputation and connection”
14 justified “obtain[ing] this \$4 million per year, and a 30% or so interest in assets that turned out to
15 be worth hundreds of millions of dollars.” (Docket no. 75, at 20:16-27.)³ The Court was
16 referring to the language in the Partnership Minutes. However, the Court ignores the evidence
17 that Mr. Itkin’s contributions went far beyond his background. He presented evidence that:

18 • Paragraph 1 of the Partnership Minutes also stated that Mr. Itkin and Mr. Sabadash
19 agreed in 1998 to “combine their assets, monetary funds, other financial resources, as well as the
20 value of their education, professional experience, business reputation and business connections to
21 jointly conduct business activities without forming a legal entity.” (Docket no. 16, Ex. A,
22 emphasis added, also Exh. A hereto.) They agreed to contribute the same types of consideration.

23 • Paragraph 2 of the Partnership Minutes stated: “Each Partner shall be personally liable
24 to the second Partner for non-performance or partial performance of his obligations hereunder.

25
26 ² California Corporations Code § 16101 explicitly defines a “partnership agreement” as an
27 agreement “whether written, oral, or implied” among the partners concerning the partnership.
28 Similarly, California Corporations Code § 15901.02 also recognizes that a partnership agreement
may be “oral, implied, in a record, or in any combination.”

³ Mr. Sabadash did not make this argument in his Motion or Reply.

1 Moreover, Partners shall serve as each other's fiduciaries. Each Party shall act in good faith
2 towards his Partner and abstain from engaging in acts of gross negligence or recklessness,
3 intentional unlawful acts or deliberate violations of the law." (Docket no. 16, Ex. A.) Thus, Mr.
4 Itkin and Mr. Sabadash agreed to be liable to the other one; they each promised to act as
5 fiduciaries; and they each agreed to abstain from improper conduct.

6 • Paragraph 5 of the Partnership Minutes stated: "In consideration of the obligations of
7 each Party to keep all the information received by the Partners hereunder confidential, Partners
8 agree not to disclose the existence of the Simple Partnership to third parties (Silent Partnership)."
9 (Docket no. 16, Ex. A.) Thus, Mr. Itkin and Mr. Sabadash each promised confidentiality.

10 But the evidence of Mr. Itkin's consideration for his 33% Partnership interest goes well
11 beyond the recitations in the Partnership Minutes, which the Court only references regarding Mr.
12 Itkin's background, experience and connections. Mr. Itkin's declaration further explains:

13 • He moved to Russia and for a time lived in squalid conditions to pursue the Partnership,
14 as stated above.

15 • In 2004, Mr. Itkin and Mr. Sabadash hired Elena Nikolayevna Vasileva "on behalf of
16 the Partnership to provide tax-related legal services to Itkin & Sabadash and the companies
17 owned by it that were held in the name of Mr. Sabadash." (Docket 16, at 37:21-23; 38:7-10.)

18 • Mr. Itkin did not receive the \$4 million per year. Instead, he "drew my share as a fairly
19 steady draw, opting to leave most of my interests invested in the Partnership. I drew between
20 approximately \$300,000 and \$800,000 per year, as needed, for a total of approximately
21 \$8,000,000 over the course of approximately sixteen years." (*Id.* at 40:23-25.) He significantly
22 reinvested in the Partnership, thereby meeting his promise that was stated in paragraph 1 of the
23 Partnership Minutes to "combine [his] assets, monetary funds, other financial resources."

24 • Mr. Itkin also kept track of Partnership income and expenses. He explained: "I kept
25 track of the Partnership's revenues and expenses and provided monthly expense statements to A.
26 Sabadash so each of us could keep track of Partnership revenues and expenses and how much
27 each of us had withdrawn from the Partnership. Attached hereto as **Exhibit H** are true and correct
28 copies of examples those cash flow statements in chronological order from the period February

1 2005 to August 2010.” (*Id.* at 54:22-26.)

2 Thus, interpreting the evidence the “light most favorable” to Mr. Itkin, he clearly
3 contributed significant time and money to the Partnership as consideration that went well beyond
4 his background, experience and connections, which themselves constituted consideration. It must
5 be kept in mind that while the Partnership eventually had assets worth hundreds of millions of
6 dollars, that future success could not have been predicted. It is unfair to Mr. Itkin to discount his
7 multiple contributions to the Partnership in light of future developments and then apply the
8 benefit of hindsight. Thus, when considering the evidence of Mr. Itkin’s contributions to the
9 Partnership in the light most favorable to him, it supports the existence of the Partnership and
10 establishes an absence of bona fide dispute in that regard, especially when considering that Mr.
11 Sabadash failed to present any admissible evidence to the contrary.

12 *Third*, the Court sees contradictions in Mr. Itkin’s statements in his declaration that he
13 moved to Russia to take over Mr. Sabadash’s existing ventures and to pursue new ventures and
14 looked into marketing our products abroad for export from Russia, on the one hand, and his
15 deposition testimony that he did not manage cash flow generated by Russian operations and “I
16 have no clue where” the “Russian flow of funds” originated. (Docket 75, at 21:1-13.)

17 As an initial matter, footnote 5 in the Memorandum asserts that this testimony is
18 admissible because “[i]t is offered not to establish the truth of the matters to which he testifies,
19 but instead to demonstrate the existence of a bona fide dispute as to the existence of the Itkin &
20 Sabadash partnership. *See* n. 3.” That presumably was a reference to footnote 4. As stated above
21 regarding footnote 4, there is no exception to the hearsay rule that hearsay is admissible to
22 demonstrate a dispute without it being accepted for the truth of the matters stated.

23 More importantly, while the Court acknowledges that it “can conceive of possible ways to
24 try to reconcile these statements,” it concludes “at the very least they would only establish that
25 Mr. Sabadash’s dispute is bona fide.” (Docket 75, at 21:11-13.) There is a very simple way to
26 reconcile these statements, especially if Mr. Itkin’s declaration and deposition testimony are read
27 in a “light most favorable” to him.

28 Mr. Itkin’s declaration does not state that he agreed to take over Russian business

1 operations. Instead, he states that Mr. Sabadash initially proposed the venture as follows: “In
2 1998, A. Sabadash asked me to move to Russia with A. Sabadash, to become ‘business partners’
3 with him and to take over the operation and growth of all of A. Sabadash’s existing business
4 ventures, as well as pursuing new business ventures.” (Docket 16, at 34:15-17, emphasis added.)
5 Mr. Itkin’s declaration does not state that he took over “the operation and growth of all of A.
6 Sabadash’s existing business ventures” in Russia, but he does state that he assisted Mr. Sabadash
7 in “pursuing new business ventures,” including (as noted by the Court) looking into marketing the
8 Partnership’s products abroad for export from Russia (*id.* at 36:17-18); he “was appointed as a
9 director and officer of the majority of the corporate entities falling under the Partnership or of the
10 parent company for each such business, controlling the boards of directors of the subsidiary
11 companies” (*id.* at 36:11-16); he also “took steps to modernize/westernize the Partnership’s
12 business interests” (*id.*); and after Mr. Sabadash was elected to the Russian Senate in 2003, Mr.
13 Itkin took “on the role of sole director and officer for the bulk of the corporate entities falling
14 within the Partnership” (*id.* at 37:16-17). He was very active in the Partnership’s business.

15 So, how can Mr. Itkin reconcile his deposition testimony in which he stated that he did not
16 “manage cash flow” generated by Russian operations and “I have no clue where” the “Russian
17 flow of funds” originated? (Zorkin Decl. (dkt. 8-1), Ex. 1, at 93:25-94:4.) In Mr. Itkin’s
18 deposition testimony that Mr. Sabadash submitted with his Motion, Mr. Itkin explained a very
19 sensible reason why, which is that those details were handled by someone else:

20 Q And you were managing the entire partnership; is that correct?

21 No. I was not managing Russian flow. I mentioned that before, number one.
22 Number two, I -- the monies that were coming in, to me, they were monies that
23 were coming from profits and -- from the profits of the partnership. I have no clue
24 where they’re coming from. It was a completely separate person that was dealing
25 with that, with the Russian flow of funds.

26 Q And who was that?

27 A Kirill Arsentiev.

28 (*Id.* at 93:93:22-94:4, emphasis added.)

In follow up questions from Mr. Zorkin, Mr. Itkin explained what he meant:

Q What do you mean by “money flows in Russia”? I’m sorry.

1 A Well, there were a number of partnership entities in Russia, and there were --
2 there were incoming funds and there were expenditures and et cetera's. All that
3 was done by Kirill Arsentiev. What I saw is the end, the monies on Golden
4 Sphinx, Golden Spirits; in other words, accounts that were over the border.

5 Q Okay.

6 A How they were generated and received there, I didn't know.

7 (*Id.* at 93:24-94:9, emphasis added.)

8 Mr. Itkin further testified that he was “notified when the money came in” and that Mr.
9 Arsentiev “would always tell me this amount of money is being sent....(*Id.* at 182:3-15.)

10 Thus, while Mr. Itkin held a position as officer and director of multiple companies with
11 assets worth hundreds of millions of dollars, he cannot be expected to know the details of “money
12 flows.” After Kirill Arsentiev was hired in 2007-2008, he handled the cash flow of net profits
13 from the Partnership’s Russian operations. He was the equivalent of a Chief Financial Officer for
14 the Partnership’s Russian operations. (Suppl. Itkin Decl., ¶ 13.)

15 In short, reading Mr. Itkin’s declaration and his actual deposition testimony in a light most
16 favorable to him leads to the conclusion that they are consistent and that they do not show that
17 there was a bona fide dispute as to the existence of the Partnership. In fact, even if the testimony
18 could be viewed as inconsistent, whether or not Mr. Itkin managed funds or personally followed
19 cash flows does not contradict the conclusion that the Partnership existed.

20 *Fourth*, the Court sees a contradiction between Mr. Itkin’s declaration regarding living in
21 a run-down apartment belonging to Mr. Sabadash’s mother-in-law and later living in a squalid
22 apartment, on the one hand, and his deposition testimony that he began receiving \$50,000 per
23 month from the Partnership “practically right away” after moving to Russia. The Court states that
24 Mr. Itkin does not explain this apparent inconsistency. (Docket no. 75, at 21:14-25.) Again, as
25 stated above, that deposition testimony is inadmissible. Further, there is no evidence that Mr.
26 Itkin was even asked to explain this apparent inconsistency that the Court identified, so it is
27 unclear why the Court criticizes Mr. Itkin for not explaining it, unless the Court is seeking to
28 impeach Mr. Itkin’s credibility without him even being asked to explain the supposed

1 inconsistency.⁴ It is well-settled that the credibility of a testimony of a witness in opposition to a
2 summary judgment motion cannot be determined by the Court in choosing to disbelieve his or
3 her testimony. *S.E.C. v. Koracorp Indus., Inc.*, 575 F.2d 692, 698 (9th Cir. 1978) (“It is not the
4 function of the trial court at the summary judgment hearing to resolve any genuine factual issue,
5 including credibility; and for the purpose of ruling on the motion all factual inferences are to be
6 taken against the moving party and in favor of the opposing party, and the appellate court will do
7 likewise in reviewing the trial court's grant of summary judgment.”) However, there is a very
8 simple explanation. When Mr. Itkin moved to Russian, his family stayed in California. The bulk
9 of the \$50,000 each month was sent to Mr. Itkin's wife so his family would have funds to pay for
10 their expenses. Mr. Itkin kept a small amount for himself to pay his expenses in Russia, while he
11 often worked more than 15 hours per day on Partnership business. {Suppl. Itkin Decl., ¶ 14.)
12 Again, Mr. Itkin's evidence was supposed to be interpreted in the light most favorable to him

13 *Fifth*, the Court also suggests that Ms. Gofman's judgment against the Partnership for
14 \$13,130.83 was a “ploy to preclude Mr. Sabadash from contesting the existence against the
15 Partnership” because she has not chosen to enforce it, which the Court concludes “casts doubt
16 about both the existence of the partnership and the validity of Ms. Gofman's claim against it.”
17 (Docket no. 75, at 22:1-7.) Of course, there is no evidence regarding Ms. Gofman's reasons for
18 not seeking enforcement. The Court speculated in that regard. Ms. Gofman's attached
19 supplemental declaration explains why she has not pursued collecting on her \$13,130.83
20 Recognition Judgment. First, the fees and costs that would be incurred by her in seeking to
21 enforce the Recognition Judgment would be disproportionate to the \$13,130.83 judgment amount.
22 Second, she has been unaware of any assets directly owned by the Partnership in California that
23 could be the subject of an inexpensive effort to enforce the Recognition Judgment. (Suppl.
24 Gofman Decl., ¶ 3.) These reasons are obvious. Rather than viewing Ms. Gofman's lack of

25
26 ⁴ Federal Rule of Evidence 613(b) states that a witness must be given an opportunity to explain
27 prior inconsistent statements: “Unless the court orders otherwise, extrinsic evidence of a witness's
28 prior inconsistent statement may not be admitted until after the witness is given an opportunity to
explain or deny the statement and an adverse party is given an opportunity to examine the witness
about it.” The Court's questioning of Mr. Itkin's credibility on this issue in its Memorandum did
not afford Mr. Itkin that opportunity.

1 collection efforts in the light most favorable to Mr. Itkin, the Court questions it in a light least
2 favorable to Mr. Itkin. More importantly, even if the Court chooses to discount the impact of Ms.
3 Gofman's lack of collection efforts on her small judgment, it still does not contradict Mr. Itkin's
4 testimony, the Partnership Minutes, the contract between Ms. Gofman and the Partnership, and
5 the rulings of the Russian Courts.

6 In short, not only did the Court question Mr. Itkin's evidence in certain respect that were
7 not questioned by Mr. Sabadash, but the Court also interpreted that evidence in a manner least
8 favorable to Mr. Itkin rather than in a light most favorable to him. Had the Court only considered
9 admissible evidence and had the Court viewed that evidence in the light most favorable to Mr.
10 Itkin, it should have concluded that there is no evidence of a bona fide dispute regarding the
11 existence of the Partnership.

12 **G. Mr. Sabadash's Reply Made Other Unfounded Accusations**

13 Mr. Itkin had no opportunity to address in writing and with evidence additional
14 accusations made for the first time in Mr. Sabadash's Reply. This Motion will address them.

15 First, without any admissible supporting evidence, Mr. Sabadash's Reply argued that Mr.
16 Sabadash's signatures on the Partnership Minutes and the Information Services Agreement were
17 forged. In authenticating those documents, Mr. Itkin already stated in his declaration attached to
18 the Opposition to the Motion to Dismiss that he saw Mr. Sabadash sign those documents.
19 (Docket no. 16, at 38:3-4; 38:11-12.) Ms. Gofman's attached declaration also confirms that she
20 prepared those documents and saw Mr. Sabadash sign those documents. (Gofman Decl., ¶ 10,
21 Exhs. A and B.) There was not a forgery. Notably, Mr. Sabadash's signature on the inadmissible
22 declarations that are attached as Exhibit 2 and 3 to Mr. Sabadash's Motion to Dismiss are
23 remarkably similar to his signatures on the Partnership Minutes and the Information Services
24 Agreement. (Docket no. 8-1, at 37 and 40 of 86; Gofman Decl., Exhs. A and B.)

25 Second, without any supporting evidence, Mr. Sabadash's Reply argued that Mr. Itkin
26 tried to give the Information Services Agreement with Ms. Gofman "an aura of legitimacy by
27 stamping it with a seal of the 'Itkin & Sabadash Partnership,'" but he botched the partnership seal
28 misspelling Mr. Sabadash's name proving that it is a fraud." In truth, Ms. Gofman ordered that

1 stamp because according to Russian custom at that time every organization needed an official
2 stamp. Since the Partnership did not have a stamp, she ordered it on an urgent basis and
3 apparently a misspelling of Mr. Sabadash's name occurred. Mr. Itkin and Ms. Gofman did not
4 realize that at the time. (Gofman Decl., ¶ 17; Suppl. Itkin Decl., ¶ 11.) The simple explanation
5 was that a mistake was made, not that the incorrect spelling was evidence of an imagined fraud.

6 Third, without any supporting evidence, Mr. Sabadash's Reply speculated that Mr. Itkin
7 paid Ms. Gofman \$21,000 between July 2018 and March 2019 to "bribe" her pursuant to a
8 conspiracy between them to file the lawsuits against the Partnership in Russia and the Los
9 Angeles Superior Court so that Mr. Itkin could "weaponize" those judgments against Mr.
10 Sabadash. Ms. Gofman and Mr. Itkin's attached declarations address those defamatory
11 statements. Ms. Gofman pursued those lawsuits to collect on the amounts owed to her by the
12 Partnership pursuant to her Information Services Agreement. (Gofman Decl., ¶ 15; Suppl. Itkin
13 Decl., ¶ 9.) A payment of \$2,000 in July 2018 is expressly accounted for in her Russian
14 Judgment against the Partnership. (Gofman Decl., ¶ 5, Exh. C; Suppl. Itkin Decl., ¶3.) Further
15 payments of \$10,000 between July 2018 and March 2019 were credited against the Russian
16 Judgment when she sought and as awarded \$13,130.83 by the Superior Court. (Gofman Decl., ¶
17 6, Exh. E; Suppl. Itkin Decl., ¶ 4.) The balance of \$9,000 was applied to fees incurred by her in
18 obtaining the Russian Judgment and also obtaining recognition of the Russian Judgment in the
19 United Kingdom. (Gofman Decl., ¶ 6, Exh. E; Suppl. Itkin Decl., ¶ 4.)

20 **H. The *Leong Partnership* Case Does Not Compel the Court's Decision**

21 In *In re Leong Partnership*, 2018 WL 1463852 (9th Cir. BAP Mar. 23, 2018), *aff'd*, 788 F.
22 App'x 539 (9th Cir. 2019), the issue was whether the claims of petitioning creditors were in bona
23 fide dispute. After the opposing alleged partner's motion to dismiss was denied, he brought a
24 motion for summary judgment. The Bankruptcy Appellate Panel noted that in granting summary
25 judgment "the bankruptcy court gave a detailed recitation of the uncontroverted facts in the
26 record and carefully analyzed why, in light of those facts, Leong was entitled to summary
27 judgment." *Id.* at *4, emphasis added. In contrast, Mr. Sabadash lacks admissible evidence and
28 Mr. Itkin offers plenty of evidence not only to demonstrate the existence of the Partnership, but

1 also to demonstrate that it is not in bona fide dispute. In *dicta*, the Court went on to address the
2 statements that the partner/creditor relied upon to prove the existence of the partnership, which
3 the Court held were “equivocal at best.” *Id.* at *8. Mr. Itkin’s evidence is not “equivocal at best,”
4 especially when viewed in the light most favorable to him.

5 The *Leong Partnership* Court explained when a bona fide dispute exists:

6 Whether a bona fide dispute exists is a question of fact, and “[t]he burden is on the
7 petitioning creditors to show that no bona fide dispute exists.” *In re Vortex Fishing*
8 *Sys., Inc.*, 277 F.3d at 1064 (citing *Rubin V. Belo Broad. Corp. (In re Rubin)*, 769
9 F.2d 611, 615 (9th Cir. 1985)). A claim is subject to “bona fide dispute” if “there
10 is an objective basis for either a factual or a legal dispute as to the validity of the
11 debt.” *Id.* (citation omitted). Put another way, “if there is either a genuine issue of
12 material fact that bears upon the debtor’s liability, or a meritorious contention as to
13 the application of law to undisputed facts, then the petition must be dismissed.” *Id.*
14 (citation omitted).

15 *Id.* at *7.

16 As noted above, the burden of persuasion only shifts to the party opposing summary
17 judgment when a moving party provides admissible evidence to demonstrate a question of fact.
18 Here, Mr. Sabadash failed to do so. However, in response, Mr. Itkin presented considerable
19 evidence that there is no genuine issue of material fact as to the existence of the Partnership. The
20 only way around that was to consider inadmissible evidence and to criticize Mr. Itkin’s evidence
21 rather than construing it in a light most favorable to him—both in violation of applicable
22 summary judgment standards.

23 **I. The Decisions of the Russian Courts and the Superior Court Are**
24 **Binding on Mr. Sabadash on the Issue of the Existence of the**
25 **Partnership**

26 **1. The Scope of the Russian Courts’ Rulings**

27 Even without evidence of the rulings of the Russian Courts, Mr. Itkin submitted
28 considerable evidence of the existence of the Partnership. The Russian Courts’ rulings
corroborate that evidence. As an initial matter, neither Mr. Sabadash nor the Court dispute that
the Russian Courts determined that the Itkin & Sabadash partnership existed and that they even
identified assets owned by the Partnership.

Before the Ninth Arbitration Court of Appeals and Russian Supreme Court, Mr. Sabadash

1 had argued that Itkin & Sabadash was not a partnership, so those Courts and the Arbitration Court
2 of the Court of the City of Moscow could not have ruled that Itkin and Sabadash was a
3 partnership that owed Ms. Gofman monies, as determined by the September 14, 2018 Judgment
4 of the Arbitration Court of the Court of the City of Moscow. On or about December 9, 2019, Ms.
5 Gofman wrote the Moscow District Arbitration Court and asked for clarification regarding how
6 the Arbitration Court of the Court of the City of Moscow could have ruled (contrary to Mr.
7 Sabadash's contentions) that Itkin and Sabadash was a partnership that owed her monies for
8 services she had rendered to the Partnership. In response, she received a letter dated December
9 12, 2019, from the Moscow District Arbitration Court. In that letter, the Court confirmed as
10 follows: "In accordance with the Federal law... The Court is the guarantor of the enforceability of
11 the lawful decision. Consequently, during the trial, the court verifies a priori the actions of each of
12 the parties, as well as the existence of each of the parties, provided that non-existence of the
13 parties (death, liquidation etc.) invalidates legal proceedings, the decision and the enforceability
14 of such decision." (Emphasis added.) (Gofman Decl., ¶ 19, Exh. F.)

15 For the same reasons, on approximately December 9, 2019, Ms. Gofman also wrote the
16 Operations Office of the Arbitration and Specialized Courts of the Judicial Department of the
17 Supreme Court of the Russian Federation. She received a response from that Office on December
18 13, 2019. In that letter, that Office confirmed as follows: "Upon review and adjudication of the
19 claim, the Arbitration court establishes the existence of each of the parties to each claim, which is
20 a prerequisite to issuance of legally binding decision. The said procedure of establishment of the
21 parties is undertaken at the preparation stage of the case review." (Emphasis added.) (Gofman
22 Decl., ¶ 20, Exh. G.)

23 Thus, both letters confirmed under Russian law that the existence of the Partnership was
24 required to have been determined by the Russian Courts notwithstanding Mr. Sabadash's
25 arguments to the contrary. (Gofman Decl., ¶ 21.)

26 Rather than disputing that the Russian Courts held that the Partnership existed and that it
27 owed Ms. Gofman for services rendered by her to the Partnership, the Court's Memorandum
28 alternatively makes multiple points regarding the Russian Courts' rulings: (1) the September 12,

1 2019 order of the Ninth Arbitration Court of Appeal ruled that the Moscow Arbitration Court
2 “had not in fact made any decision as to the rights and obligations of Mr. Sabadash, including
3 whether he was deemed to be a member of the Alleged Partnership” (docket no. 75, at 11:18-20);
4 (2) that means that the previously-quoted language from the September 14, 2018 judgment
5 Moscow Arbitration Court is *dicta* (*id.* at 11:27-12:1);⁵ (3) that means “there was no ‘decision’ in
6 the ‘resolutive or the declarative parts’ of the Judgment about either the existence of the
7 partnership or Mr. Sabadash’s personal rights and obligations” (*id.* at 12:1-3); (4) the September
8 12, 2019 order of the Ninth Arbitration Court of Appeal held that because “Mr. Sabadash is not
9 party to the lawsuit...[t]he mere existence of a simple partnership agreement does not form
10 sufficient basis for allowing Applicant to appeal the ruling”; (5) according the September 12,
11 2019 order of the Ninth Arbitration Court of Appeal, it is “factually incorrect” “that an actual
12 decision had been made about the existence of the alleged partnership Itkin & Sabadash” (*id.* at
13 12:24-28); (6) the August 6, 2020 Information Summary of the Ninth Arbitration Court of Appeal
14 is not shown to be a “judgment or decision that would be entitled to preclusive effect” (*id.* at
15 13:3-5); (7) the Information Summary “does not address the apparently plain statement of the
16 Russian Appellate Court that it is ‘factually incorrect’ to assert that any decision was made about
17 the existence of the alleged partnership” (*id.* at 13:5-7); (8) alternatively, the existence of the
18 Partnership at the time of the September 14, 2018 judgment Moscow Arbitration Court does not
19 mean it existed at other times, given Mr. Itkin’s (inadmissible) trial testimony that the
20 “partnership ended” in 2016, so it could have ended at any time; and (9) alternatively, Ms.
21 Gofman could have filed an opposition to the Motion to Dismiss, but did not do so.

22 That is a lot to address. Briefly stated, in order:

23 (1) As quoted on page 11 of the Memorandum, the September 12, 2019 order of the Ninth
24 Arbitration Court of Appeal admittedly held that “the decision of the trial court does not address
25 Mr. Sabadash’s personal rights and obligations” and “[t]here is no reference to Mr. Sabadash’s
26 personal rights or obligations in either the resolutive or the declarative parts of the court
27

28 ⁵ The Court similarly should ignore the *dicta* in the *Leong Partnership* case described above.

1 decision.” That is very different from a determination that the Partnership did not exist. The
2 Moscow Arbitration Court plainly held that it did exist, and it awarded Ms. Gofman a judgment
3 against the Partnership.

4 (2) That means that the finding of the Moscow Arbitration Court was not *dicta*. Indeed, it
5 could not have been *dicta*. Awarding Ms. Gofman a judgment against the Partnership
6 necessitated a determination that the Partnership existed. Whether that determination bound Mr.
7 Sabadash is a different issue, which is addressed below.

8 (3) While there may not have been “a ‘decision’ in the ‘resolutive or the declarative parts’
9 of the Judgment about ... Mr. Sabadash’s personal rights and obligations,” there clearly was a
10 decision by the Moscow Arbitration Court “in the ‘resolutive or the declarative parts’ of the
11 Judgment about ... the existence of the partnership.” Again, whether that determination bound
12 Mr. Sabadash is a different issue, which is addressed below.

13 (4) Here, the Court is correct. The September 12, 2019 order of the Ninth Arbitration
14 Court of Appeal held that because “Mr. Sabadash is not party to the lawsuit...[t]he mere
15 existence of a simple partnership agreement does not form sufficient basis for allowing Applicant
16 to appeal the ruling.”

17 (5) The September 12, 2019 order of the Ninth Arbitration Court of Appeal did not hold
18 as this Court stated that is was “factually incorrect” “that an actual decision had been made about
19 the existence of the alleged partnership Itkin & Sabadash.” (Docket no. 75, at 12:24-27.) The
20 order actually stated (as quoted on page 11 of the Memorandum) regarding the appellant (Mr.
21 Sabadash): “The Appellant’s position is that the Court made its decision as to Appellant’s rights
22 and obligations, deeming A. V. Sabadash to be a member of the Simple Partnership ‘Itkin and
23 Sabadash’ which is factually incorrect.” (Docket no. 21-1 (Zorkin Reply Decl.), Exh. 17, at 51 of
24 68.) The quoted language on page 12 of the Memorandum merely shows that Ninth Arbitration
25 Court of Appeal held that Mr. Sabadash was not a party to the lawsuit before the Moscow
26 Arbitration Court so he lacked standing to appeal. That is point of the preceding paragraph.

27 (6) As explained in Mr. Itkin’s Supplemental Brief, the Information Summary from the
28 Ninth Arbitration Court of Appeals was the result of a request for clarification in an Information

1 Request by the Partnership. A true and correct copy is attached as Exhibit A to the Supplemental
2 Brief. The Partnership asked the Court to clarify its September 12, 2019 order on several issues,
3 including the existence of the Partnership. The Supplemental Brief quotes the Information
4 Request in that regard. (Docket no. 45 (Exh. 1 thereto), Exh. A thereto, at 4.) In response to this
5 request, the Court issued the Information Summary on August 8, 2020, in which it held (1) Mr.
6 Sabadash had participated in the proceedings; (2) all participants (including Mr. Sabadash) had a
7 full and fair opportunity to be heard; (3) the plaintiff (Ms. Gofman) had rendered services to the
8 Partnership; (4) it further confirmed the ownership of the Partnership by Mr. Itkin and Mr.
9 Sabadash; (5) it explained that Mr. Sabadash's involvement included filing the appeal from the
10 September 12, 2018 decision of the lower court in which Mr. Sabadash challenged whether Itkin
11 and Sabadash was a partnership; (6) it explained that the Court had considered and rejected Mr.
12 Sabadash's contentions regarding the non-existence of the Partnership; and (7) the Information
13 Summary was ordered to be published. It is inconceivable that the published Information
14 Summary, which clarified the September 12, 2019 ruling, would not be considered a final order.

15 (7) the Information Summary did not need to address the "apparently plain statement of
16 the Russian Appellate Court that it is 'factually incorrect' to assert that any decision was made
17 about the existence of the alleged partnership" because the September 12, 2019 order of the Ninth
18 Arbitration Court of Appeals did not make such a statement, as noted in point 5 above. As quoted
19 extensively in Mr. Itkin's Supplemental Brief, the Information Summary repeatedly stated that
20 the Court actually had held that the Partnership existed.

21 (8) It is a red herring to argue that the existence of the Partnership at the time of the
22 September 14, 2018 judgment of the Moscow Arbitration Court does not mean it existed at other
23 times, given Mr. Itkin's (inadmissible) trial testimony that the "partnership ended" in 2016, so it
24 could have ended at any time. The issue is whether the Partnership still exists to this day, so it
25 can qualify as a "person" that can be subject to an involuntary petition. Evidence that the Russian
26 Courts held that the Partnership existed in 2018, 2019 and 2020 clearly is relevant to that showing
27 in the absence of a subsequent dissolution of the Partnership, which Mr. Itkin requested in the
28 stayed State Court Action but on which no ruling has been made. The statement that the

1 Partnership ended in 2016 was not a legal conclusion but a layperson's statement about the
2 practical (not the legal) "end of the Partnership" when Mr. Itkin testified: "I believe the
3 partnership ended when I was removed from the offices and refused to be paid monies that I'm
4 owed" and that it occurred in 2016. (Docket 8-1, Exh. 9, at 25:25-26:3.) California Corporations
5 Code states: "A partnership is dissolved, and its business shall be wound up, only upon the
6 occurrence of any of the following events:... (5) On application by a partner...." (emphasis
7 added.) Mr. Itkin sought dissolution of the Partnership by his first cause of action in his second
8 amended cross complaint in the State Court Action. That cause of action has not yet been ruled
9 upon because this Court determined in the Golden Sphinx Limited ("GSL") case that it is stayed.
10 The Partnership has not yet been dissolved. It still exists.

11 (9) The fact that Ms. Gofman did not file an opposition to the Motion to Dismiss does not
12 prove she agreed with it. The Motion was brought against Mr. Itkin, not Ms. Gofman.

13 If the foregoing is not sufficient for the Court to conclude that under Russian law that the
14 existence of the Partnership was determined by the Russian Courts and that Mr. Sabadash is
15 bound by those decisions, Mr. Itkin asks that the Court consider the attached declaration of Rob
16 Childress. Professor Childress is an attorney and an adjunct professor of Russian law at the
17 University of South Carolina School of Law. (Childress Decl., ¶ 1.) He was retained by Mr.
18 Itkin's attorney "as an expert in Russian law." (*Id.*, ¶ 2.) His curriculum vitae supported that
19 expertise. (*Id.*, Exh. 1.) His declaration is helpful to an understanding of the rulings of the
20 Russian Courts in favor of Ms. Gofman that determined the existence of the Partnership over Mr.
21 Sabadash's objections. In his Summary of Findings, he states as follows regarding the rulings of
22 the Ninth Arbitration Court of Appeals, an intermediate appellate court, and the Russian Supreme
23 Court that rejected Mr. Sabadash's evidence and arguments that the Partnership did not exist:

24 10. ...the Ninth Arbitrazh Appellate Court, in a court trial, accepted and
25 adjudicated upon the new evidence and arguments submitted by Mr. Sabadash in
26 his appeal, as well as his motion to reinstate the deadline for filing an appeal,
27 including his contention that a general partnership between "Itkin and Sabadash"
did not exist, and rejected all of the arguments made by Mr. Sabadash, thereby
confirming the existence of a partnership between Mr. Sabadash and Mr. Itkin.

28 11. Upon further appeal to the Arbitrazh Court of the Moscow Circuit (Okrug)
and the RF Supreme Court Collegium on Economic Disputes, both courts rejected

1 all Mr. Sabadash's arguments against the existence of the Simple Partnership,
2 upholding Ninth Arbitrazh Appellate Court's decision determining and confirming
3 the existence of partnership as between Mr. Sabadash and Mr. Itkin. The
Determination entered by the RF Supreme Court was final and all appeals have
been exhausted.

4 His declaration goes on to explain in detail the Russian legal system (*id.*, ¶¶ 12-44) and
5 the historical background of the four Russian Courts that were involved with Ms. Gofman's
6 matters. (*Id.*, ¶¶ 45-82.) After explaining the factual background of the Gofman lawsuit (*id.*, ¶¶
7 83-94), he explains in considerable detail the trial and appellate court proceedings in the Gofman
8 lawsuit, including the August 6, 2020 Information Summary (*id.*, ¶¶ 95-116), which he stated
9 "provides a complete and accurate account of the Gofman case. (*Id.*, ¶ 107.)

10 There can be no doubt that Mr. Sabadash's arguments and evidence were heard by
11 multiple Russian Courts and rejected.

12 **2. The Russian Courts' Decisions and the Superior Court's**
13 **Judgment Were Binding Upon Mr. Sabadash as to the**
14 **Existence of the Partnership**

15 The Court relied upon the standards for issue preclusion under California law.
16 (Memorandum, at 10:1-21.) The standards are met: (1) The issue of the existence of the
17 Partnership identical. That is the issue before this Court, and it was an issue before the Russian
18 Courts, as confirmed by Professor Childress. (2) The issue was actually litigated, which is why
19 the September 14, 2018 judgment of the Moscow Arbitration Court determined that the
20 Partnership existed and the September 12, 2019 Ruling and the August 6, 2020 Information
21 Summary from the Ninth Arbitration Court of Appeals later confirmed that. (3) The issue was
22 necessarily decided in four decisions of the Russian courts. Ms. Gofman could not obtain a
23 judgment against the Partnership and have that judgment affirmed in appeals filed by Mr.
24 Sabadash unless the Partnership existed. (4) The decisions of the Moscow Arbitration Court and
25 the Ninth Arbitration Court of Appeals were appealed up the Russian Supreme Court. Mr.
26 Sabadash presented his arguments and evidence, which were rejected. The judgment is final. (5)
27 The party against whom preclusion is sought (Mr. Sabadash) was in privity with the Partnership,
28 which was a party to the proceedings in the Russian Courts.

1 The Court cites law that partners are not in privity with other partners: “a judgment
2 against one partner in an action brought against him personally on a tort arising out of the
3 partnership business is res judicata when the same issues are raised in subsequent litigation
4 against another partner.’ *Patel v. Crown Diamonds, Inc.*, 247 Cal. App. 4th 29, 39, (Cal. Ct. App.
5 2016), *as modified* (Apr. 29, 2016) (citation omitted).” (Docket no. 75, at 14:2-6.) That law is
6 inapplicable because (1) it does not concern privity between partnerships and their partners, and
7 (2) it concerns privity for purposes of joint liability, not issue preclusion as the Mr. Itkin’s
8 Opposition already explained. (Docket 16, at 15:23-16:2.) Mr. Itkin cited *Headwaters Inc. v.*
9 *U.S. Forest Serv.*, 399 F.3d 1047, 1052–53 (9th Cir. 2005); *Lake at Las Vegas Investors Group,*
10 *Inc. v. Pacific Malibu Dev. Corp.*, 933 F.2d 724, 728 (9th Cir. 1991); *PNY Techs., Inc. v. Miller,*
11 *Kaplan, Arase & Co., LLP*, 2017 WL 2876736, at *4 (N.D. Cal. July 6, 2017), for the proposition
12 that partners are in privity with their partnerships for purposes of issue preclusion. (*Id.* at 15.)
13 The Court’s Memorandum does not mention these decisions, but instead relies upon the *Patel*
14 decision, which Mr. Itkin had already distinguished. As noted at page 16 of the Opposition:

15 “[T]he general rule denying privity solely by virtue of partnership status does not
16 preclude applicability of res judicata rules to partners who are otherwise subject
thereto.” *Krofcheck v. Ensign Co.*, 112 Cal. App. 3d 558, 566 (1980).

17 (Docket no. 16, at 16:3-5.)

18 Similarly, under the authorities cited above, Mr. Sabadash is in privity with the
19 Partnership by virtue of the fact that he is a partner, regardless of whether he disputes that fact
20 (without any admissible evidence). He also is bound by the Superior Court’s Recognition
21 Judgment in favor of Ms. Gofman against the Partnership. The Court’s Memorandum explains
22 that Mr. Itkin brought an ex parte application to intervene in that lawsuit in grounds that the
23 Partnership did not exist, but that application was denied. (Docket no. 75, at 14:7-15:16:2.) That
24 application was actually considered and denied, so Mr. Sabadash actually did participate in that
25 lawsuit through the application. Notably, he did not seek any relief from that ruling from the
26 Court of Appeal. (Supp. Gofman Decl., ¶ 18.)

27 **J. Abstention is Improper**

28 Mr. Sabadash’s Motion to Dismiss and his Reply briefly argued that the Court should

1 abstain in this involuntary Chapter 7 case pursuant to 11 U.S.C. § 305. The Court’s
2 Memorandum similarly provides little analysis on this further alternative ruling in the last
3 paragraph of its June 16, 2025 Memorandum. This Court recognized GSL’s foreign liquidation
4 proceeding where the ownership of the Beverly Hills property is at issue. (Docket no. 75, at
5 22:21-23:2.) Given the involuntary Chapter 7 case, the issue now is whether the Jersey Court
6 should reciprocate in deferring to this Court deciding whether Itkin & Sabadash is a California
7 Partnership that owns, among other assets, the Property in Beverly Hills, California, under
8 California partnership and real estate law. “[C]omity is not just a one-way street. Just as this
9 Court will defer to a foreign court if the circumstances require it, so too should a foreign court
10 defer to this Court when appropriate.” *In re RHTC Liquidating Co.*, 424 B.R. 714, 725 (Bankr.
11 W.D. Pa. 2010). Accord, *McGee v. Estelle*, 722 F.2d 1206, 1214 (5th Cir.1984) (en banc)
12 (quoting *Thompson v. Wainwright*, 714 F.2d 1495, 1509 (11th Cir.1983)).

13 Mr. Itkin’s Opposition to the Motion to Dismiss explained in great detail why abstention
14 is not consistent with the five goals of Chapter 15 case. (Docket no. 16, at 28:7-32:8.) Neither
15 Mr. Sabadash’s Reply nor the Court’s “alternative” ruling in its Memorandum addressed any of
16 these factors, so Mr. Itkin is unable to respond to the Court’s reasons in this Motion beyond there
17 mere facts that it has recognized the GSL proceeding where ownership of the Beverly Hills
18 property is at issue, even though (as explained in the Opposition) it is not close to trial—unlike
19 here where the parties’ lawyers were trial ready and actually commenced trial in March 2020 until
20 a mistrial was declared due to Covid-19

21 III. CONCLUSION

22 Based upon the foregoing, Mr. Itkin respectfully request that the Court vacate its June 16,
23 2025 Memorandum (docket no. 75) and its June 17, 2025 order of dismissal.

24 DATED: July 1, 2025

HILL, FARRER & BURRILL LLP

25 By: /s/ Daniel J. McCarthy

26 Daniel J. McCarthy
27 Attorneys for Petitioning General Partner
28 GARRY Y. ITKIN

SUPPLEMENTAL DECLARATION OF GARRY Y. ITKIN

I, Garry Y. Itkin, declare:

1. This declaration supplements my declaration that was attached to my Opposition that was filed on my behalf on April 8, 2025, to Alexander Sabadash's "Motion to Dismiss Involuntary Petition Under FRCP 12(b)(1) and 12(b)(6) or, in the Alternative, Motion for Summary Judgment."

2. In his reply brief that was filed on April 15, 2025 (the "Reply") with the Bankruptcy Court in the Partnership's involuntary Chapter 7 case, Mr. Sabadash made multiple defamatory accusations against Elena Gofman and me. I am informed that the Reply stated:

Mr. Itkin had no written evidence of a partnership so he found Ms. Gofman and paid her to forge documents and file a lawsuit on Mr. Itkin's behalf. This part of Mr. Itkin's scheme began in July 2018 when he made the first payment to Gofman from his personal bank account. Between July 2018 and March 2019, Mr. Itkin made six payments to Ms. Gofman totaling \$21,000. (Supp. Zorkin Decl., Ex. 18.) The series of bribes culminated in a \$10,000 payment on March 25, 2019 which corresponds with the filing of the Gofman California action to enforce the Russian judgment on April 19, 2019.

3. I acknowledge wiring Ms. Gofman \$21,000 between July 2018 and March 2019. The payments were not "bribes." A payment of \$2,000 was wired to me by me to her on July 6, 2018. That was the equivalent to 124,000 Russian rubles ("RUB"). Page 3 of the English translation of the Russian Judgment that is attached hereto as Exhibit C states: "Defendant, represented by Managing Partner G. U. Itkin, has voluntarily partially satisfied [Plaintiff's] Demand for Payment by remitting 2,000 (two thousand) US dollars (an amount equal to 124,000 (one hundred twenty four thousand) RUB)." That payment was accounted for in reaching the amount awarded in the Russian Judgment, which was the equivalent to \$23,130.83. Thus, Itkin & Sabadash (the "Partnership") was credited for the first payment of \$2,000 when Ms. Gofman obtained the Recognition Judgment for the balance owing to her by the Partnership.

4. Attached hereto as **Exhibit E** is a true and correct copy of the motion for judgment

1 on the pleadings that was filed on Ms. Gofman's behalf in her Superior Court Action against the
2 Partnership on August 7, 2019. As set forth in that motion, the Partnership was further credited
3 with an additional \$10,000 in payments that I had wired her between July 2018 and March 2019,
4 which is why I believe the motion requested and Ms. Gofman was awarded the balance of
5 \$13,130.83 in the Recognition Judgment. The sums of \$2,000 and \$10,000 account for \$12,000
6 of the total amount of \$21,000 that I wired to Ms. Gofman between July 2018 and March 2019. It
7 is my understanding that the balance of \$9,000 was applied to the equivalent of \$5,000 in legal
8 fees incurred by Ms. Gofman in obtaining the Russian Judgment and the equivalent of \$4,126.72
9 in legal fees incurred by Ms. Gofman in obtaining recognition of the Russian Judgment in the
10 United Kingdom.

11 5. I am informed that the Reply further stated:

12 In exchange for \$21,000, Ms. Gofman agreed to sign a contract supposedly for
13 services to the "partnership" and file a lawsuit against the "partnership." After
14 discovery closed in the state court action, Mr. Itkin "found" a contract between the
15 "partnership" and used it to support his motion for summary adjudication.

16 6. I did not pay Ms. Gofman \$21,000 between July 2018 and March 2019 in order to
17 induce her to sign a contract for services to the "partnership" and file a lawsuit against the
18 "partnership." Mr. Sabadash and I both hired Ms. Gofman on behalf of the Partnership many
19 years earlier in 2004. When we met her, we informed her about our partnership. On her
20 recommendation, we confirmed the terms of our partnership at an in-person meeting on February
21 12, 2004, at which Ms. Gofman was present. Ms. Gofman then promptly prepared the minutes of
22 that meeting, which are dated February 12, 2024. She was present when Mr. Sabadash and I
23 signed that document (the "Partnership Minutes"). A true and correct copy of those Minutes that
24 are in Russian and an English translation of those Minutes is attached hereto as **Exhibit A**. Mr.
25 Sabadash's signature on those Minutes was not forged. I saw Mr. Sabadash sign the Partnership
26 Minutes. At the same time, I also saw Mr. Sabadash sign the Information Services Agreement
27 that Ms. Gofman had prepared under which we hired her to perform services for the Partnership.
28 A true and correct copy of that Agreement, which also is dated February 12, 2024, and was

1 executed on or about that date, and an English translation of that Agreement is attached hereto as
2 **Exhibit B**. Mr. Sabadash's signature on the Information Services Agreement also was not
3 forged.

4 7. I understand that Mr. Sabadash complained in his Reply that the February 12, 2024
5 Partnership Minutes are illegible. A more legible copy of the Partnership Minutes in Russian is
6 attached as **Exhibit D**.

7 8. The Reply further stated:

8 To the contrary, Mr. Itkin, purporting to act on behalf of the partnership,
9 strategically and promptly admitted allegations, revived the time-barred suit in
10 Russia, admitted allegations once more in California, and conceded a judgment
11 against the purported partnership by failing to oppose Gofman's motion for
12 judgment on the pleadings. All the while, Mr. Itkin was in a conspiracy with Ms.
13 Gofman to whom he paid \$21,000. Mr. Itkin did all this so that he can use the
14 judgments *against* Mr. Sabadash.

15 9. I did not engage in a conspiracy with Ms. Gofman to cause her to file a lawsuit
16 against the Partnership in Russia and then obtain recognition of the Russian Judgment by the Los
17 Angeles Superior Court so that I could use those judgments against Mr. Sabadash. Ms. Gofman
18 decided to file those lawsuits on her own so she could try to collect on the balance of monies
19 owed to her by the Partnership. The Partnership was credited by her with the \$21,000 that I had
20 paid her on behalf of the Partnership.

21 10. I am informed that the Reply further states regarding the February 12, 2024
22 Partnership Minutes that:

23 Mr. Itkin tried to give this contract an aura of legitimacy by stamping it with a seal of the
24 "Itkin & Sabadash Partnership." But he botched the partnership seal misspelling
25 Mr. Sabadash's name proving that it is a fraud.

26 11. That statement is false. I did not order that stamp. I am informed that Ms.
27 Gofman ordered the Partnership stamp because according to Russian custom at that time every
28 organization needed an official stamp. Since the Partnership did not have a stamp, she ordered it

1 on an urgent basis and apparently a misspelling of Mr. Sabadash's name occurred. I did not
2 realize that at the time.

3 12. I understand that the Court questions the existence of the Partnership based upon
4 the lack of a written agreement when the Partnership was formed, given the promise to me of \$4
5 million per year and my reluctance to move to Russia, especially given that I am an accountant.
6 There is a simple explanation. Between 1990 and 1998, Mr. Sabadash and our spouses became
7 good friends. I trusted Mr. Sabadash, and I believe he trusted me. Neither one of us suggested
8 that a written agreement was necessary and in fact we engaged in business together without a
9 written agreement until Ms. Gofman recommended in early 2014 that we confirm the Partnership
10 in writing, as explained above.

11 13. In connection with my position with the Partnership, I was not the person who
12 managed cash flow generated by the Partnership's Russian operations. As I testified in my
13 deposition in the State Court Action between Mr. Sabadash, Golden Sphinx Limited, other
14 entities and me, that was done by Kirill Arsentiev. In approximately 2007-2008, Mr. Arsentiev
15 was hired by Mr. Sabadash and me (on behalf of the Partnership) to manage cash flow generated
16 by the Partnership's Russian operations. Before we hired Mr. Arsentiev, I managed all finances,
17 including "rubles, after I arrived in Russia. Mr. Arsentiev was the equivalent of Chief Financial
18 Officer for Russian operations, with strict instructions from Mr. Sabadash and I that net Russian
19 ruble profits from Russian operations were to be transferred to Golden Spirits Limited or Golden
20 Sphinx Limited, both Jersey limited liability companies, for the purpose of paying dividends to
21 Mr. Sabadash and me. After we hired Mr. Arsentiev, both of those companies became "wallets"
22 for those profits. Prior to working for the Partnership, Mr. Arsentiev was a senior Vice President
23 of MDM-Bank, a large bank in Moscow.

24 14. The Court's June 16, 2025 Memorandum perceived an inconsistency between the
25 \$50,000 per month that I was paid by the Partnership when I moved to Russia and my living
26 conditions at the time, first in an apartment that I was told by Mr. Sabadash was owned by his
27 mother-in-law and then in my own apartment. That is easily explained. When I moved to Russia,
28 my family stayed in California. The bulk of the \$50,000 each month was sent to my wife so my

1 family would have funds to pay for their expenses. I kept a small amount to pay my expenses in
2 Russia, while I often worked more than 15 hours per day on Partnership business.

3 15. I am informed that Mr. Sabadash's Reply argued that I failed to produce the
4 Partnership Minutes in the State Court Action. Those Minutes and the Information Services
5 Agreement with Ms. Gofman were trial exhibits in the State Court Action, which I am informed
6 were provided to Mr. Zorkin, who was trial counsel for Mr. Sabadash.

7 16. If Jeff Ratner's deposition testimony in the State Court Action (attached as Exhibit
8 15 to Mr. Sabadash's Reply) is to be considered by the Court, Mr. Ratner testified at pages 89 and
9 90 that I informed him of the Partnership and that it would own corporations. Mr. Ratner's
10 deposition testimony that is attached to his opposition to the objection to his proof of claim
11 (docket no. 53) also provides further excerpts from his deposition transcript regarding my
12 statements to him about my partnership with Mr. Sabadash.

13 The foregoing is within my personal knowledge. I declare under penalty of perjury of the
14 laws of the United States of America that the foregoing is within my personal knowledge, that this
15 declaration is true and correct and that this declaration was executed on July 1, 2025.

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18 Garry Y. Itkin
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DECLARATION OF ELENA GOFMAN

I, Elena Gofman, declare:

1. I am now and since July 2001 have been a tax lawyer in Russia. I formerly was known as Elena Nikolayevna Vasilieva.

2. I understand that in the involuntary Chapter 7 case of Itkin & Sabadash (the “Partnership”), case no. 2:25-bk-11235-NB, the Court questioned the fact that I had not taken any action to enforce the judgment (the “Recognition Judgment”) that I obtained in November 2019 in the Los Angeles Superior Court (the “Superior Court”) in case no. 19STCP01412 (the “Superior Court Action”) against the Partnership, which recognized the judgment I obtained against the Partnership in Russia in September 2018 (the “Russian Judgment”). I am informed that in its June 16, 2025 Memorandum Decision Dismissing Involuntary Petition, the Court stated:

(5) Ms. Gofman has not attempted to enforce the Recognition Judgment, which awards her \$13,130.83, since it was entered approximately six years ago.

Her failure to enforce the Recognition Judgment lends credence to Mr. Sabadash’s assertion that the Recognition Judgment was obtained solely as a ploy to preclude Mr. Sabadash from contesting the existence of the partnership. That, in turn, casts doubt about both the existence of the partnership and the validity of Ms. Gofman’s claim against it.

3. I have not yet taken any action to seek to enforce the Recognition Judgment against the Partnership for two reasons. First, the fees and costs that would be incurred by me in seeking to enforce the Recognition Judgment would be disproportionate to the \$13,130.83 judgment amount. Second, I have been unaware of any assets directly owned by the Partnership in California that could be the subject of an inexpensive effort to enforce the Recognition Judgment.

4. I understand that Alexander Sabadash filed a reply brief filed on April 15, 2025 (the “Reply”) with the Bankruptcy Court in the Partnership’s involuntary Chapter 7 case and that Mr. Sabadash has made multiple defamatory accusations against me and Garry Itkin in that

1 Reply. I am informed that the Reply stated:

2 Mr. Itkin had no written evidence of a partnership so he found Ms. Gofman
3 and paid her to forge documents and file a lawsuit on Mr. Itkin's behalf. This part of
4 Mr. Itkin's scheme began in July 2018 when he made the first payment to Gofman
5 from his personal bank account. Between July 2018 and March 2019, Mr. Itkin made
6 six payments to Ms. Gofman totaling \$21,000. (Supp. Zorkin Decl., Ex. 18.) The
7 series of bribes culminated in a \$10,000 payment on March 25, 2019 which
8 corresponds with the filing of the Gofman California action to enforce the Russian
9 judgment on April 19, 2019.

10 5. I acknowledge receipt of \$21,000 from Mr. Itkin by wire transfers between July
11 2018 and March 2019. The payments were not "bribes." A payment of \$2,000 was wired to me
12 by Mr. Itkin on July 6, 2018. That was the equivalent to 124,000 Russian rubles ("RUB"). Page
13 3 of the English translation of the Russian Judgment that is attached hereto as Exhibit C states:
14 "Defendant, represented by Managing Partner G. U. Itkin, has voluntarily partially satisfied
15 [Plaintiff's] Demand for Payment by remitting 2,000 (two thousand) US dollars (an amount equal
16 to 124,000 (one hundred twenty four thousand) RUB)." Thus, that payment was accounted for in
17 reaching the amount awarded in the Russian Judgment, which was the equivalent to \$23,130.83.
18 Thus, the Partnership was credited for the first payment of \$2,000 when I obtained the
19 Recognition Judgment for the balance owing to me by the Partnership.

20 6. Attached hereto as **Exhibit E** is a true and correct copy of the motion for judgment
21 on the pleadings that was filed on my behalf in the Superior Court Action on August 7, 2019. As
22 set forth in that motion, the Partnership was further credited an additional \$10,000 in payments
23 that Mr. Itkin had wired me between July 2018 and March 2019, which is why the motion
24 requested and I was awarded the balance of \$13,130.83 in the Recognition Judgment. The sums
25 of \$2,000 and \$10,000 account for \$12,000 of the total amount of \$21,000 that Mr. Itkin wired to
26 me between July 2018 and March 2019. The balance of \$9,000 was applied to the equivalent of
27 \$5,000 in legal fees incurred by me in obtaining the Russian Judgment and the equivalent of
28 \$4,126.72 in legal fees incurred by me in obtaining recognition of the Russian Judgment in the

1 United Kingdom.

2 7. I am informed that the Reply further stated:

3 The Opposition does not mention that Gofman has not tried to enforce her
4 California Judgment for almost six years. (Itkin Decl. Ex. F, Judgment entered on
5 Nov. 7, 2019 for \$13,130.83.) She doesn't need to because Mr. Itkin already paid her
6 almost double to play along. And the payments were not made to pay off the alleged
7 debt. Even after receiving \$21,000, Ms. Gofman still claimed in court that she was
8 owed the full amount for her alleged services and Mr. Itkin agreed with her claim.

9 8. I have explained above why I have not yet taken any action to enforce the
10 Recognition Judgment. As I also have explained, the Partnership has been credited with the
11 payments made to me by Mr. Itkin on behalf of the Partnership, which is why I still was owed the
12 balance that I sought by the Russian Judgment, as recognized by the Recognition Judgment. Mr.
13 Itkin did not pay me to "play along."

14 9. I am informed that the Reply further stated:

15 In exchange for \$21,000, Ms. Gofman agreed to sign a contract supposedly for
16 services to the "partnership" and file a lawsuit against the "partnership." After
17 discovery closed in the state court action, Mr. Itkin "found" a contract between the
18 "partnership" and used it to support his motion for summary adjudication.

19 10. Mr. Itkin did not pay me \$21,000 between July 2018 and March 2019 in order to
20 induce me to sign a contract for services to the "partnership" and file a lawsuit against the
21 "partnership." Mr. Itkin and Mr. Sabadash both hired me on behalf of the Partnership many years
22 earlier in 2004. When they came to me, they informed me about their partnership. On my
23 recommendation, they confirmed the terms of their partnership at an in-person meeting on
24 February 12, 2004, at which I was present. At that time, I prepared the minutes of that meeting,
25 which are dated February 12, 2024, and I saw Mr. Itkin and Mr. Sabadash sign that document (the
26 "Partnership Minutes"). A true and correct copy of those Minutes that are in Russian and an
27 English translation of those Minutes is attached hereto as **Exhibit A**. Mr. Sabadash's signature
28 on those Minutes was not forged. I saw Mr. Itkin and Mr. Sabadash sign the Partnership Minutes.

1 At the same time, I also saw Mr. Itkin and Mr. Sabadash sign the Information Services
2 Agreement that I had prepared under which they hired me to perform services for the Partnership.
3 A true and correct copy of that Agreement, which also is dated February 12, 2024, and was
4 executed on or about that date, and an English translation of that Agreement is attached hereto as
5 **Exhibit B**. Mr. Sabadash's signature on the Information Services Agreement also was not
6 forged.

7 11. Attached hereto as **Exhibit C** is a true and correct copy of the Service Delivery
8 Reports that I prepared for the Partnership dated December 31, 2004, December 31, 2005, and
9 December 31, 2006, with an English translation of the three reports. I prepared those reports for
10 the Partnership pursuant to my February 12, 2004 Information Services Agreement with the
11 Partnership (Exhibit B hereto). I prepared those reports shortly after the end of each year covered
12 by the Reports. Those Reports accurately state that I duly executed and discharged my
13 obligations under the Agreement, namely provided consulting, information and legal services, as
14 well as advice on tax matters, tax optimization and selection of optimal taxation structure, on-site
15 and field tax audits, taxpayers rights and protection, accounting, tax planning, tax strategy risk
16 assessment and monitoring of applicable law pertaining to the Partnership's assets and property
17 and that I provided the Partnership with monthly written reports on work performed during the
18 relevant service period.

19 12. I understand that Mr. Sabadash complained in his Reply that the February 12, 2024
20 Partnership Minutes are illegible. The original of those Minutes were submitted to the Moscow
21 Arbitration Court in my action to obtain the Russian Judgment, and it was not returned to me. A
22 more legible copy of the Partnership Minutes in Russian is attached as **Exhibit D**.

23 13. I filed the lawsuit against the Partnership in Russia in July 2018. Mr. Itkin did not
24 pay me \$21,000 or any other monies to file that lawsuit. I filed it for the purpose of collecting on
25 the balance of the Partnership's debt to me, which is set forth in the Russian Judgment.

26 14. The Reply further stated:

27 To the contrary, Mr. Itkin, purporting to act on behalf of the partnership,
28 strategically and promptly admitted allegations, revived the time-barred suit in

1 Russia, admitted allegations once more in California, and conceded a judgment
2 against the purported partnership by failing to oppose Gofman's motion for
3 judgment on the pleadings. All the while, Mr. Itkin was in a conspiracy with Ms.
4 Gofman to whom he paid \$21,000. Mr. Itkin did all this so that he can use the
5 judgments *against* Mr. Sabadash.

6 15. I did not engage in a conspiracy with Mr. Itkin to file a lawsuit against the
7 Partnership in Russia and then obtain recognition of the Russian Judgment by the Superior Court
8 so that Mr. Itkin could use the judgments against Mr. Sabadash. Again, those lawsuits were filed
9 so I could try to collect on the monies owed to me by the Partnership, and the Partnership was
10 credited for the \$21,000 that Mr. Itkin had paid me.

11 16. I am informed that the Reply further states regarding the February 12, 2024
12 Partnership Minutes that:

13 Mr. Itkin tried to give this contract an aura of legitimacy by stamping it with a seal of the
14 "Itkin & Sabadash Partnership." But he botched the partnership seal misspelling
15 Mr. Sabadash's name proving that it is a fraud.

16 17. That statement is false. Mr. Itkin did not order that stamp. I ordered the
17 Partnership stamp because according to Russian custom at that time every organization needed an
18 official stamp. Since the Partnership did not have a stamp, I ordered it on an urgent basis and
19 apparently a misspelling of Mr. Sabadash's name occurred. I did not realize that at the time.

20 18. In the Superior Court Action, Mr. Sabadash brought an ex parte application to
21 intervene in that Action, which the Superior Court denied. Mr. Sabadash did not seek any relief
22 from that ruling before the Court of Appeal in California.

23 19. Before the Ninth Arbitration Court of Appeals and Russian Supreme Court, Mr.
24 Sabadash had argued that Itkin and Sabadash was not a partnership, so those Courts and the
25 Arbitration Court of the Court of the City of Moscow could not have ruled that Itkin and
26 Sabadash was a partnership that owed me monies, as determined by the September 14, 2018
27 Judgment of the Arbitration Court of the Court of the City of Moscow. On or about December 9,
28 2019, I wrote the Moscow District Arbitration Court and asked for clarification regarding how the

1 Arbitration Court of the Court of the City of Moscow could have ruled (contrary to Mr.
2 Sabadash's contentions) that Itkin and Sabadash was a partnership that owed me monies for
3 services I had rendered to the Partnership. In response, I received a letter dated December 12,
4 2019, from the Moscow District Arbitration Court, a true and correct copy of which is attached
5 hereto as **Exhibit F**, along with an English translation of that letter. In that letter, the Court
6 confirmed as follows: "In accordance with the Federal law... The Court is the guarantor of the
7 enforceability of the lawful decision. Consequently, during the trial, the court verifies a priori the
8 actions of each of the parties, as well as the existence of each of the parties, provided that non-
9 existence of the parties (death, liquidation etc.) invalidates legal proceedings, the decision and the
10 enforceability of such decision." (Emphasis added.)


11 20. For the same reasons, on approximately December 9, 2019, I also wrote the
12 Operations Office of the Arbitration and Specialized Courts of the Judicial Department of the
13 Supreme Court of the Russian Federation. I received a response from that Office on December
14 13, 2019, a true and correct copy of which is attached hereto as **Exhibit G**, along with an English
15 translation of that letter. In that letter, the Office confirmed as follows: "Upon review and
16 adjudication of the claim, the Arbitration court establishes the existence of each of the parties to
17 each claim, which is a prerequisite to issuance of legally binding decision. The said procedure of
18 establishment of the parties is undertaken at the preparation stage of the case review." (Emphasis
19 added.)

20 21. Thus, both letters confirmed that the existence of the Partnership was required to
21 have been determined by the Russian Courts notwithstanding Mr. Sabadash's arguments to the
22 contrary.

23 22. I am licensed to practice law in Russia. I would never jeopardize my license by
24 engaging in the bribery and conspiracy that Mr. Sabadash has falsely accused me of engaging in.

25 23. I am fluent in Russian. I am not completely fluent in English, but I understand
26 English well enough to read this declaration and to understand it. To make sure that I understood
27 this declaration before signing it, I had the assistance of a person (not Garry Itkin) who is fluent
28 in Russian and English.

1 The foregoing is within my personal knowledge. I declare under penalty of perjury of the
2 laws of the United States of America that the foregoing is within my personal knowledge, that this
3 declaration is true and correct and that this declaration was executed on July 1, 2025.

4
5
6 
Elena Gofman

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA, 37TH FLOOR
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

DECLARATION OF DANIEL J. McCARTHY

I, Daniel J. McCarthy, declare:

1. Attached hereto as **Exhibit H** is a true and correct copy of the Court's Order Dismissing Involuntary Petition that was entered on June 17, 2025. (Docket no. 76.)

2. Attached hereto as **Exhibit I** is a true and correct copy of the Court's Memorandum Decision Dismissing Involuntary Petition that was entered on June 17, 2025. (Docket no. 75.)

3. Attached hereto as **Exhibit J** is a true and correct copy of the transcript of the April 22, 2025 hearing in this action.

4. Attached hereto as **Exhibit K** is a true and correct copy of the transcript of the June 3, 2025 hearing in this action.

The foregoing is within my personal knowledge. I declare under penalty of perjury of the laws of the United States of America that the foregoing is within my personal knowledge, that this declaration is true and correct and that this declaration was executed on July 1, 2025.

/s/ Daniel J. McCarthy

Daniel J. McCarthy

DECLARATION OF RON CHILDRESS

I, RON CHILDRESS, hereby declare:

1. I am an attorney at law duly licensed to practice in the state of South Carolina, and an adjunct professor of Russian law at the University of South Carolina School of Law. A true and correct copy of my curriculum vitae is attached hereto as Exhibit 1.

2. I have been retained as an expert in Russian Law by Atabek & Associates, P.C., to review materials provided to me, conduct my own investigation, and ultimately render opinions on certain questions asked of me relating to certain legal proceedings that took place in the Russian Federation. A true and correct index, and copy of the materials I reviewed for this assignment is attached hereto as Exhibit 2.

3. The matters stated herein are based on my personal knowledge and opinions, based upon review of the materials listed in the attached Log and the Analysis set forth below.

4. If called upon to testify as witness I could and would competently testify to the accuracy and truth of such matters.

SUMMARY OF FINDINGS

5. Alexander Sabadash (“Mr. Sabadash”) was a party to the *Arbitrazh* lawsuit brought by Elena Gofman against the Simple Partnership of “Itkin and Sabadash” (hereinafter, the “Gofman lawsuit”).

6. In the Gofman Lawsuit, Mr. Sabadash failed to comply with the RF *Arbitrazh* Procedural Code (*APK*) in raising the issue of whether a partnership between himself and Garry Itkin (“Mr. Itkin”) existed before the *Arbitrazh* Court for the City of Moscow, and his arguments against the existence of the Simple Partnership were presented and rejected in turn by the Ninth *Arbitrazh* Appellate Court, the *Arbitrazh* Court of the Moscow Circuit (*Okrug*), and the Russian Federation (“RF”) Supreme Court Collegium on Economic Disputes.

7. The Determination entered by the RF Supreme Court was final, and Mr. Sabadash has no further rights of appeal on the issue.

8. In a 2017 criminal prosecution of Mr. Sabadash, the *Smol’ninskii* Court of General Jurisdiction, the trial court incorporated testimony of witnesses that Messrs. Itkin and Sabadash had shared a business relationship as part of its guilty judgment, which judgment and findings were cited with approval by the *Arbitrazh* Court of the Moscow Circuit (*Okrug*).

9. While Russian procedural jurisprudence does not recognize American

1 “fundamental fairness” or “due process,” which usually precludes an American assessment of
2 a given result reached by a Russian trial or appellate court, there are no indications in the
3 records I have reviewed that would suggest that the findings against Mr. Sabadash were
4 formalistic, or otherwise denied Mr. Sabadash due process he would have received in the
5 United States. In fact, based on my review of the proceedings, it appears Mr. Sabadash was
6 duly served with the pleadings in those proceedings, and given every opportunity to (and in
7 fact, did!) present evidence and arguments to support his position, and the Russian courts
8 simply disagreed with him, time and again, at every level.

9 10. More specifically, the Ninth Arbitrazh Appellate Court, in a court trial,
10 accepted and adjudicated upon the new evidence and arguments submitted by Mr. Sabadash
11 in his appeal, as well as his motion to reinstate the deadline for filing an appeal, including his
12 contention that a general partnership between “Itkin and Sabadash” did not exist, and rejected
13 all of the arguments made by Mr. Sabadash, thereby confirming the existence of a partnership
14 between Mr. Sabadash and Mr. Itkin.

15 11. Upon further appeal to the Arbitrazh Court of the Moscow Circuit (Okrug) and
16 the RF Supreme Court Collegium on Economic Disputes, both courts rejected all Mr.
17 Sabadash’s arguments against the existence of the Simple Partnership, upholding Ninth
18 Arbitrazh Appellate Court’s decision determining and confirming the existence of partnership
19 as between Mr. Sabadash and Mr. Itkin. The Determination entered by the RF Supreme
20 Court was final and all appeals have been exhausted.

21 ANALYSIS

22 **I. Paradigms in Russian Versus American Legal Discourse**

23 12. There are four important differences between Russian and American
24 jurisprudence that American attorneys must keep in mind. Our “paradigms” of legal discourse
25 are very different on their face, though in practice it is not so hard to follow once you become
26 aware of certain fundamental concepts in Russian law. (This idea of jurisprudential
27 “paradigms” comes from Ronald Dworkin’s 1986 book, Law’s Empire.) We can easily go
28 astray without keeping these differences in mind.

29 **A. Common Law Versus Civil Law.**

30 13. American common law rests upon court precedents under our tradition of *stare*
31 *decisis*.

1 14. American legal history, in fact, reveals an almost grudging attitude toward
2 statutes. In South Carolina, for example, many legislative acts incorporate existing common
3 law. Therefore, construction in derogation of common law rights is to be avoided. Statutes
4 actually in derogation of common law are to be construed strictly to preserve vested rights.
5 One might say that our common law co-exists with, but precedes and preempts, statutes.

6 15. By contrast, the Soviet Union and the Russian Federation inherited the
7 traditions of civil law, like most European countries – namely, the general concept of law
8 (*pravo*) rests upon statutory enactment (*zakon*). This is why Russian lawyers use the word
9 *zakon* far more frequently than *pravo* in everyday conversation.

10 16. More importantly, the interpretation and application of Russian statutes is not
11 governed by court precedent. Rather, Russian litigators invoke “Explanations” issued by
12 “Apex” Courts. The concept of an Apex Court is discussed below in describing the Russian
13 Federation court structure.

14 17. Through an “Explanation” (*Razyasnenie*), an Apex Court conveys to lower
15 courts the correct interpretation of a statutory provision. The formal name for an
16 “Explanation” is “Resolution” (*Postanovlenie*). These Resolutions are issued by the *Plenum*
17 of the Apex Court which is basically the entire corps of its judges. For example, the current
18 authorized membership for the RF Supreme Court is 170 judges (but the actual membership is
19 below that number).

20 18. From 2000 until August 2014, the Apex Court for the *Arbitrazh* Court system
21 was the highest *Arbitrazh* Court (abbreviated *VAS* in Russian). During that period, *VAS*
22 issued eight such Resolutions: **2009 VAS Resolution No. 36 (28 May); 2009 VAS**
23 **Resolution No. 61 (23 July); 2011 VAS Resolution No. 12 (17 February); 2011 VAS**
24 **Resolution No. 30 (24 March); 2012 VAS Resolution No. 43 (12 July); 2013 VAS**
25 **Resolution No. 100 (25 December); 2014 VAS Resolution No. 48 (11 July); 2014 VAS**
26 **Resolution No. 49 (11 July).**

27 19. In 2014 *VAS* was absorbed by the RF Supreme Court (abbreviated *VS* in
28 Russian). Since that time the RF Supreme Court has issued two such Resolutions: **2020**
29 **Supreme Court (VS) Resolution No. 12 (30 June); 2020 Supreme Court (VS) Resolution**
30 **No. 13 (30 June).**

31 20. Several of these Resolutions are discussed below as they interpret relevant

portions of the *Arbitrazh* Procedural Code (*Arbitrazhnyi Protsessual'nyi Kodeks – APK*).

B. Law and Duty Arise Only from Statute

21. Everyday life does not require an American citizen to know about the “duty of due care.” Outside driver training schools, the duty of due care comes into focus only when an accident gives rise to litigation. Approaching a stop sign, the average American motorist may think about the rules of the road, but such legal doctrines as negligence, contributory negligence, and last clear chance will make their appearance (if at all) only after a wreck results in a lawsuit.

22. In the Russian paradigm, by contrast, rights and duties (*prava i obyazannosti*) have no justiciable reality outside a law-relationship (*pravootnoshenie*), which must be established by substantive statute (*zakon*). When a substantive law-relationship becomes a legal dispute, then the parties enter into a procedural law-relationship which will consist of procedural rights and duties.

23. Of course, Russian disputes involve things (called *ob'yekty*) and people as bearers of rights and duties (called *sub'yekty*). In order for a factual dispute to acquire a justiciable nature, some substantive Code (*Kodeks*) must explicitly describe their rights and duties.

24. The doctrine of “case and controversy” is second nature to American attorneys. Without some concrete thing in dispute between persons, a cause of action cannot arise. American attorneys historically have assumed that rights and duties exist as natural law.

25. All the foregoing vocabulary seems baffling and unnecessary to American attorneys, but they make up the language of Russian litigation. The present case is an example. But, again, bearing these concepts in mind, one can easily understand the Russian proceedings and explain them in terms that are familiar to American courts.

C. Due Process in the Russian Court System

26. Unlike our American court systems, the 1993 Constitution of the Russian Federation does not mention “due process” or the concept of “fundamental fairness” anywhere within its text or interpretation of those texts. Yet, in some respects in civil litigation, their procedures can offer more opportunities to make an argument than even our own system.

27. American procedural rules are construed in light of both plain language and case law, which often includes a federal or state constitutional “test.” Post Conviction Relief

(PCR in South Carolina) frequently goes beyond a court record, even though all procedural rules may appear to have been followed. For example, “ineffective assistance of counsel” might involve failure of counsel to contact or summon an alibi witness. This claim is often used as a textbook example of the manner in which the American constitutional law may override procedural correctness.

28. Courts of the Russian Federation follow three procedural codes (discussed below), the instant case primarily involves the *Arbitrazh* Procedural Code (*Arbitrazhnyi Protsessual’nyi Kodeks – APK*) from which examples are drawn. All three procedural codes are governed not by American “due process” standards but by “correct application of statutes” (*pravilnoe primeneniye zakonov*) – i.e., statutory procedural provisions. As noted above, the interpretation of such provisions is not drawn from case law but from *Plenum* Resolutions (aka, “Explanations”).

29. *APK* Article 6 declares that: “Legality (*zakonnost’*) in consideration of cases by an *Arbitrazh* court is achieved (*obespechivaetsya*) through correct application of statutes and other normative legal acts, and likewise through observance by all *Arbitrazh* court judges of rules established by legislation for *Arbitrazh* court proceedings.” There is no mention of an American-style “due process” doctrine.

30. In describing conduct of an *Arbitrazh* court in consideration of a case, *APK* Article 9(3) once again recites the “correct application” standard:

An *Arbitrazh* court, maintaining independence, objectivity and impartiality, shall conduct direction of the trial (*protsess*), explain their rights and duties to persons participating in the case, warn of the consequences for performing or not performing procedural actions, provide cooperation in exercise of their rights, establish conditions for comprehensive and complete investigation of evidence, establishing factual circumstances and correct application of statutes and other normative legal acts in considering the case.

31. *APK* Article 9(3) also declares that *Arbitrazh* courts shall also ensure “comprehensive and complete investigation of evidence”. The duty of “comprehensive and complete investigation” is also found in both the Criminal Procedural Code (*UPK*) and the Civil Procedural Code (*GPK*). It is actually a legacy of Soviet legality. Even in the post-Soviet Russian Federation, reviewing courts have reversed trial court judgments because the lower court failed to consider possible issues that may or may not have been raised by a party. In this sense, the Russian system can actually provide *more* protection of a litigant’s rights,

1 rather than less.

2 32. All **APK** provisions governing review of trial court decisions follow the same
3 “correct application” standard: (1) appellate review (*apellyatsionnaya instantsiya*) is
4 governed by **APK** Article 270; (2) cassational review (*kassatsionaya instanstiya*) – by **APK**
5 Articles 286 through 288; and (3) supervisory review (*nadzor*) – by **APK** Article 308.11.

6 33. Thus, an American inquiry into the “fundamental fairness” of a given Russian
7 legal proceeding or result is simply a projection of an American paradigm upon Russian legal
8 discourse. A Russian legal analysis would simply seek to assure “correct application” of
9 relevant statutory provisions. Yet, in any given case, one can review the *opportunities* given
10 to litigants, and the *outcome* to nonetheless determine whether a proceeding was “fair” by
11 American standards.

12 **D. Specialization**

13 34. American judges tend to be generalists. A South Carolina Circuit Court or
14 Federal District Circuit Judge can hear civil and criminal cases. I understand that in California,
15 the same is true for federal judges, yet state judges are broadly divided by matters such as
16 probate, family law, and civil litigation (encompassing everything from personal injury, to
17 commercial disputes, to intellectual property disputes). This overall identity as a generalist is
18 found at all levels from trial courts to the United States Supreme Court which today consists
19 of nine justices. By contrast, the Russian Federation Supreme Court is authorized to have 170
20 judges divided into specialized collegia and panels.

21 **II. A Brief History of the Soviet Judiciary**

22 35. Chapter 20 of the 1977 USSR Constitution described the Soviet Judiciary.
23 Article 153 declared the USSR Supreme Court to be the highest court in the Soviet Union.
24 Below the Supreme Court, each of the 15 Republics had a Republic Supreme Court below
25 which the courts were arrayed in a hierarchical system. At the lowest level were the District
26 (*Rayonnyi*) and City (*Gorodskii*) Peoples Courts functioning as trial courts which are
27 described in Russian as courts “of first instance.”

28 36. Article 163 established a system of “state agencies” tasked to resolve disputes
29 between enterprises, institutions, and organizations. These agencies constituted the Soviet
30 *Arbitrazh* system. The original French word *arbitrage* can mean “arbitration” while in
31 English the term has special commercial meaning.

37. The above-mentioned provisions of the 1977 USSR Constitution were replicated in Chapter 21 (Articles 163 and 175) of the 1978 Constitution for the Russian Soviet Federal Socialist Republic (RSFSR) which was one of the 15 Soviet Republics of the USSR.

38. The Soviet *Arbitrazh* corresponded to neither the French nor English versions, since commercial enterprise was unknown in the USSR. Instead, the Soviet *Arbitrazh* was a special government institution charged with resolving disputes in implementing the Five Year Plans.

III. Modern Day Court Structure of the Russian Federation

39. The Soviet Union was dissolved on December 25, 1991. In July 1991, while still part of the USSR, the RSFSR adopted a statute (1991 No. 1543-1) which converted the Soviet *Arbitrazh* into a system of *Arbitrazh* Courts specializing in commercial cases. The original 1991 statute was replaced in July 1995 by R.F. Federal Constitutional Statute (*Federal'nyi Konstitutsionnyi zakon – FKZ*) No. 1.

40. Between 1991 and December 1993, the RSFSR Constitution remained in effect the fundamental law of the new, independent Russian Federation. Chapter 21 of that Constitution was revised significantly. The new *Arbitrazh* Court system (just described) became one of two Apex court systems in the Russian Federation, with the Highest *Arbitrazh* Court at the top of the *Arbitrazh* pyramid. The Soviet-era court system became known as the Courts of General jurisdiction (CGJ) with the RF Supreme Court at the Apex. CGJ tribunals tried all criminal and civil cases, except for the commercial cases that were under *Arbitrazh* court competence.

41. The *Arbitrazh* courts conducted trials and appeals under an *Arbitrazh* Procedural Code (*Arbitrazhnyi Protsessual'nyi Kodeks – APK*). CGJ tribunals followed two Codes – the criminal Procedural Code (*Ugolovnyi Protsessual'nyi Kodeks – UPK*) and the Civil Procedural Code (*Grazhdanskii Protsessual'nyi Kodeks – GPK*).

42. In August 2014, the Highest *Arbitrazh* Court was absorbed by the RF Supreme Court and all references to it were deleted from Chapter 7 of the 1993 Constitution. However, the three procedural codes – *APK*, *UPK* and *GPK* – remained in effect with amendments as necessary to reflect absorption of the *Arbitrazh* first and second instance (trial and reviewing) courts into the RF Supreme Court pyramid.

43. A final feature of the evolving judicial Russian system between 1991 and 1993 deserves brief mention. The new Chapter 21 of the RSFSR Constitution established a Constitutional Court which is not an apex court. It does not review appeals from trial or intermediate appeals courts.

44. Essentially, the Constitutional Court renders rulings that, for Americans, are the equivalents of “advisory opinions.” “First instance” (meaning “trial”) courts, whether CGJ or *Arbitrazh* tribunals should not decide constitutional questions but refer them to the Constitutional Court, often suspending trial court proceedings.

IV. Historical Background on *Arbitrazh* Courts Relevant to the Instant Action

45. Four levels of courts were involved in the Gofman case, three of which were part of the *Arbitrazh* system: (1) the *Arbitrazh* Court for the City of Moscow; (2) the Ninth *Arbitrazh* Appellate Court; (3) the *Arbitrazh* Court of the Moscow Circuit (*Okrug*); and (4) the RF Supreme Court Collegium on Economic Disputes.

46. The three levels of *Arbitrazh* courts were established in 1995 by Federal Constitutional statute (*FKZ*) No. 1. The trial courts were established by Article 34 of this Statute. Each subdivision (*Subyekt*) of the Russian Federation has an *Arbitrazh* trial court. Under Article 65 of the RF Constitution, the City of Moscow is deemed a “City of Federal Significance” for which the *Arbitrazh* Court for the City of Moscow serves as trial (“First Instance”) court.

47. Article 33.1 of Federal Constitutional Statute (*FKZ*) No. 1 established twenty Appellate courts. Each Appellate Court encompassed several RF Subdivisions, ranging from three to eight. In 2014, the Twenty-First Appellate Court was established with the annexation of Crimea. The Ninth *Arbitrazh* Appellate Court contains only the City of Moscow.

48. Article 24 of Federal Constitutional Statute (*FKZ*) No. 1 established ten Circuit (*Okrug*) Courts each of which encompassed several RF Subdivision. The *Arbitrazh* Court of the Moscow Circuit contains only the City of Moscow and the Moscow *Oblast* (these were the basic administrative districts created by the Soviets as subdivisions of the fifteen USSR Republics).

49. In 2014, when the Highest *Arbitrazh* Court (*VAS*) was absorbed by the Supreme Court (*VS*), a Supreme Court Collegium or Chamber (*Kollegia*) on Economic Disputes was established by 2014 Federal Constitutional Statute (*Federal'nyi*

1 **Konstitutsionnyi Zakon – FKZ**) No. 3. It consists of three judicial panels. A total of 26
2 judges are currently members of this Collegium. The final stage of the Gofman case was a
3 cassational appeal to the 2nd panel (Contract Disputes), rejected by a Determination
4 (**Opredelenie**) signed by Judge Chuchunova.

5 **V. Authority and Function of the Relevant Courts—the *Arbitrazh* Procedural Code**
6 **(*APK*) and Controlling Plenum Resolutions.**

7 **A. The *Arbitrazh* Court for the City of Moscow**

8 50. ***APK*** Division Two governs proceedings in ***Arbitrazh*** trial courts (“courts of
9 first instance”). Rules that govern the filing and service of a Summons and Complaint can
10 vary among American jurisdictions, but generally these actions are ministerial in character.
11 American litigators can challenge jurisdiction of the court, adequacy of service and the
12 complaint itself through defendant motions.

13 51. By contrast, the Russian ***Arbitrazh*** court of first instance *sua sponte* accepts,
14 rejects, defers or returns the complaint under ***APK*** Articles 127, 127.1, 128 or 129. As noted
15 above, “Explanations” issued as “Resolutions” by the Highest ***Arbitrazh*** Court Plenum –
16 rather than case law in American practice – interpret provisions of the ***APK***. At the conclusion
17 of proceedings on the merits, an ***Arbitrazh*** court issues a Decision (***Reshenie***) under Articles
18 167 through 183 of ***APK*** Chapter 20.

19 **B. The Ninth *Arbitrazh* Appellate Court**

20 52. Proceedings in ***Arbitrazh*** Appellate Courts are governed by ***APK*** Chapter 34.
21 As in trial courts, the appellate court may accept or defer the petition for consideration under
22 ***APK*** Articles 261 and 263. It may also return the petition under ***APK*** Article 264 or terminate
23 consideration of the petition at a later time under ***APK*** 265. (Incidentally, ***APK*** Article 268(1)
24 states that appellate review shall consist of *de novo* consideration of evidence presented in the
25 court of first instance.)

26 53. Under ***APK*** Article 257(1) appellate review is described as follows: “Persons
27 participating in a case, and likewise other persons in cases contemplated by this Code, may
28 appeal the decision (***Reshenie***) of an ***Arbitrazh*** court of first instance, not yet having entered
29 into legal force, in an appellate proceeding.” The general rule governing such persons is
30 found in ***APK*** Article 42: “Persons not participating in a case, about whose rights and duties a
31 court order (***akt***) has been adopted, may appeal that decision or dispute it in a supervisory

1 procedure under rules established by this Code. Such persons possess the rights and bear the
2 duties of Persons participating in the case.”

3 54. *APK* Article 42 was interpreted by 2009 *VAS* Plenum Resolution No. 36.
4 Paragraph One of the Resolution declared that *APK* Articles 16(3) and 42 establish that
5 persons not participating in a case may still challenge a court order (*akt*) that violates their
6 rights and legal interests or affects their rights and duties.

7 55. Paragraph One took up *APK* Articles 257 (The Right of Appellate Review)
8 and 272 (Appellate Petitions from Determinations of a First Instance *Arbitrazh* Court). The
9 Court then explained that: “Persons not participating in a case, whether named or not named
10 in the rationale (*motivirochnaya* [*chast*’]) and/or dispositive part (*rezolyutivnaya chast*’) of
11 the court order (*akt*) may appeal through an appellate review proceeding if it was adopted
12 regarding their rights and duties – that is, the given court order (*akt*) directly “touches” their
13 rights and duties, to include creating “obstacles to exercise of a subjective¹ right or proper
14 discharge of a duty with regard to one of the parties to the dispute.”

15 56. This passage creates what American lawyers would call a “test.” In the
16 American “paradigm” such “tests” are found in case law decisions.

17 57. The “test” found in Paragraph One of 2009 *VAS* Plenum Resolution No. 36
18 (28 May 2009) has subsequently been confirmed by 2009 *VAS* Resolution No. 61 (23 July
19 2009). Since 2014, the RF Supreme Court (*VS*) has issued all Plenum Resolutions governing
20 *Arbitrazh* courts. Paragraphs One and Two of 2020 *VS* Plenum Resolution No. 12 (30 June)
21 restated with approval the original “test” adopted in the 2009 *VAS* Plenum Resolution No. 36.

22 58. Paragraph Two of 2009 *VAS* Plenum Resolution No. 36 further stated: “If a
23 petition is filed by a person not participating in the case, the court should determine if the
24 petition contains a basis for the manner in which the disputed court order (*akt*) directly
25

26 ¹ A another brief linguistic digression is required to explain “subjective” as cited from
27 Paragraph One above. In Russian jurisprudence, the word “person” (*litso*) has legal significance
28 only in phrases like “natural person” (*fizicheskoe litso*), “legal person” (*yuridicheskoe litso*), an
29 “official” (*dolzhnostnoe litso*) or “third person” (*tret’yo litso*). The word “subject” (*sub’yekt*),
30 however, means a “bearer of rights and duties.” Usually, the word is employed when a “person”
31 has entered into a law-relationship (*pravootnoshenie*) established under a statute. For example,
Messrs. Itkin and Sabadash were in the law-relationship described by Civil Code (GK) Chapter 55
- i.e., a contract of “Simple Partnership” which establishes rights and duties. Thus, the adjective
“subjective” in the passage above has the specific legal meaning just described, as opposed to
our English understanding which connotes feelings or attitudes.

1 touches the rights and duties of the applicant. In the absence of the appropriate basis the
2 appellate petition shall be returned on the grounds of *APK* Article 264(1)[1].” Thus, under
3 2009 VAS Plenum Resolution No. 36, an appellate petition shall be returned to the applicant
4 and proceedings on the petition shall terminate even after acceptance of the petition in the
5 circumstances described above.

6 59. *APK* Article 264(1) calls for return of an appellate petition to the moving
7 party, if it comes to light that: “the appellate petition was filed by a person not having the right
8 to appeal the court order (*akt*) in an appellate procedure.” The termination of appellate review
9 in the circumstances just described is accomplished by a Determination (*Opredelenie*) with
10 further review available under *APK* Article 265(3) & (4).

11 **C. The Arbitrazh Court for the Moscow Circuit**

12 60. In Russian jurisprudence, the next level of review is described as cassational
13 instance.

14 61. Such proceedings are not limited to certain courts. Cassational proceedings are
15 governed by *APK* Chapter 35. Like the trial and appellate courts, a court of cassational
16 instance may accept or defer the petition for consideration under *APK* Articles 278 and 280.
17 It may also return the petition under *APK* Article 281 or terminate consideration of the
18 petition at a later time under *APK* 282.

19 62. A court of cassational instance may issue a Ruling (*Postanovlenie*) that leaves
20 the lower court order unchanged and denies the petition for cassational review under *APK*
21 Article 287.

22 **D. The Supreme Court Collegium (*Kollegia*) on Economic Disputes**

23 63. As described above, 2014 Federal Constitutional Statute (*Federal’nyi*
24 *Konstitutsionnyi zakon – FKZ*) No. 3 created the Collegium (*Kollegia*) on Economic
25 Disputes. *APK* Chapter 35 regulates all cassational reviews in the *Arbitrazh* courts. Under
26 *APK* Article 291.1, cassational petitions can be taken from such courts as the *Arbitrazh* Court
27 for the Moscow Circuit to the RF Supreme Court and specifically to one of its Judicial
28 Collegia. In other words, such a cassational petition takes the case out of the *Arbitrazh*
29 system.

30 64. Nevertheless, these cassational reviews are governed by *APK* Articles 291.2
31 through 291.15. *APK* Article 291.3 prescribes the form and content of a cassational petition to

1 a Supreme Court Collegium (*Kollegia*). *APK* Article 291.5 sets forth criteria for returning a
2 petition to the petitioner without consideration on the merits (*po sushchestvu*). *APK* Article
3 291.6 governs transmittal of a cassational petition for review by a Collegium. However,
4 Section (2) of *APK* Article 291.5 calls for return to the petitioner if the petitioner lacks the
5 right to seek appellate review. Finally, *APK* Article 291.8 calls for a Determination
6 (*Opredelenie*) in such case, if upon review of the petition by a single judge of a Collegium the
7 conditions for return exist. The petition shall not be passed to the full Collegium for
8 consideration on the merits.

9 **E. Relevant Plenum Resolutions**

10 65. On 25 December 2013 the Higher *Arbitrazh* Court Plenum issued Resolution
11 No. 100, which confirmed “Instructions on Record Management in the R.F. *Arbitrazh* Courts
12 (of first, appellate and cassational instance).” The “Instructions”² themselves were attached as
13 a document consisting of 384 pages. The text filled 299 pages with 66 forms as attachments
14 which are referenced in the text.

15 66. The “Instructions” addressed three topics: (1) General Provisions on Record
16 Management; (2) the Record (*Protokol*) for a Court Session; and (3) Conducting Reference-
17 Informational (*Spravochnaya-Informatsionnaya*) Work. The General Provisions regulate
18 activities of the docketing staff in trial, appellate and cassational courts.

19 **a. Applicable General Provisions**

20 67. Section Four (4) of these “Instructions” governs actions to be taken by the
21 docketing staff at the trial court level upon filing of a lawsuit. Section Four.One (4.1)
22 describes documents to be filed with the lawsuit establishing the identity and location of the
23 Plaintiff and Defendant as juridical persons or as registered individual entrepreneurs. This
24 passage in the “Instructions” cites and applies *APK* Article 126(9).

25 68. Section Four.Two (4.2) states that the documentation requirements of *APK*
26 Article 126(9) shall not apply if the Plaintiff or Defendant is a foreign person. In such case,
27 *APK* Article 254(3) shall apply. That provision requires a foreign person which is a juridical
28 person or a registered individual entrepreneur in that country to present evidence of juridical
29

30 ² A Translation Note is required: The Russian word *Deloproizvodstvo* can mean “Record
31 Management” or “Case Proceeding” because *Delo* can mean “File” or “Case” (among other
things). Since these “Instructions” describe clerical functions, the former translation is used.

1 status and the right to engage in entrepreneurial activity. If the Defendant is simply a physical
2 (natural) person, the requirement does not apply.

3 69. Section Five (5) interprets provisions for court notifications, in particular
4 notification to participants that a lawsuit has been accepted and that a court case has been
5 opened. There are thirteen detailed subsections to this portion of the “Instructions” which
6 describe procedures for serving all participants with timely notifications and court orders. The
7 same attention to detail is found much later in Sections 20 (on cases with foreign persons) and
8 Sections 21 through 22 (on initial reception of lawsuits).

9 70. Section Forty is entitled “Organizing Control of Record Management
10 Conduct.” It clearly demonstrates that the Russian docketing staff bears responsibility for the
11 accuracy of information on the names, locations, and status of participants in a case. By
12 contrast, in American practice disputed questions concerning the existence and capacity of
13 parties or service of process are brought to the court by the parties themselves for resolution
14 by the court, rather than determined administratively by court staff.

15 **b. Reference-Informational (*Spravochnaya-Informatsionnaya*) Work**

16 71. The “Instructions” describe Reference-Informational Work, meaning the
17 development by docketing staff of documentary reports and certificates of an official nature.
18 The Russian word *spravka* has several meanings, but in official jargon the English word
19 “certificate” is the most appropriate rendering. Thus, when the “Instructions” use *spravka* or
20 its adjectival version *spravochnyi* (feminine ending – *aya*; neuter ending – *oe*), the process
21 contemplates reference and certifying of findings. (In translating the title to these sections,
22 “Reference-Informational” is used since English “Certifying” does not necessarily convey the
23 reference work that must precede this kind of certification.)

24 72. Section Thirteen (13) is entitled “Production and Processing a Certificate of
25 Returning the State Fee and Other Certificates of an Informational Character.” This Section is
26 quite brief. The only “informational” certificates discussed in it are responses to requests for
27 information about a refund of the State fee or about a bankruptcy proceeding.

28 73. Section Forty-Five (45) is entitled “Reference-Informational Work.” Several
29 subsections are translated below. They illustrate the tenor and objective of Section Forty-Five
30 (45) and introductory Sections as they direct and describe responsibilities of docketing staff in
31 the RF *Arbitrazh* court system.

74. Section Forty-Five.One (45.1): “The basis for reliability and efficiency of the *Arbitrazh* courts Reference-Informational Service is scrupulous discharge by specialists, and law clerks of the judicial panels, and by *Arbitrazh* court division specialists of requirements for timely entry into the systems of automated court proceedings and record management of information on the progress of lawsuits (pleadings), appellate, and cassational petitions, court cases, motions and petitions and other documents and court orders (*akty*) adopted on them.”

75. Section Forty-Five.Two (45.2): “Interested persons may receive information on the progress of court cases and documents in an *Arbitrazh* court at the official [web]site of the corresponding court and also on the official [web]site of the RF *VAS* on the “internet” network using the services “Card File (*Kartoteka*) of *Arbitrazh* Cases” or “Database of *Arbitrazh* Court decisions (*Resheniya* – plural).”

76. “Work of an *Arbitrazh* Court [web]site shall be organized through the Office of Court informational Support in cooperation with judicial panels and divisions of the court.”

77. Section Forty-Five.Three (45.3): “Information and Certification(s) (*Spravki*) by telephone are given out with information about the registration number of a received document, its sender number and date, name of the *Arbitrazh* court and number of the court case, considered in the “first instance,” information about the Plaintiff and Defendant and Third Persons. Search shall be conducted on every mandatory requisite or their entirety.”

78. Section Forty-Five.Four (45.4): “The immediate conduct of certification work shall be conducted by a specialist ([or] specialists) of the Reference-Informational Service of record management or other division of the court at the discretion of the court chairperson, working in cooperation with the judicial panels and divisions using the systems of automated case management and record management permitting receipt of necessary information for providing certificates on cases and petitions.”³

79. Section Forty-Five.Five (45.5): “Employees of the Reference (*Spravochnaya*) Service, the judicial panels and divisions shall communicate to persons participating in a case, to other interested persons, to their representatives, and likewise to representatives of mass information media the following information: [1] the receipt number of a lawsuit (pleading)

³ Translation note: this passage contains two Russian *words sudoproizvodstva* (literally, “court management”) and *deloprovodstva* (“record management”) in this Declaration. Clearly, the terms refer to two different aspects of an automated judicial system.

1 and corresponding number of the court case being considered or considered by a court; [2] the
2 substance of an order (*akt*) adopted in a case; [3] the receipt and consideration of appellate
3 and cassational petitions; [4] the substance of rulings adopted on a petition; [5] the receipt of
4 comments (*zayavleniy* – plural) on a decision (*reshenie*), actions (inactions) of the court
5 bailiff/enforcement officer and results of considering a comment (*zayavlenie*); [6] the name of
6 the judicial panel or division in which a complaint, court case or petition is under
7 consideration...[10] the issuance or dispatch of the execution order; dispatch of a written
8 answer.”

9 80. Section Forty-Five.Six (45.6): “The Reference-Informational Service shall
10 provide information on progress of court cases, pleadings and petitions at any stage in passage
11 (consideration) to the parties or their representatives on oral (telephonic) requests the entire
12 working day.”

13 81. In summary, the “Instructions” describe several activities performed by
14 docketing personnel which Americans find hard to comprehend. In fairness, it must be
15 recognized that the rules on creation of a Record (*Protokol*) represent a great improvement
16 from practices of the 1990s. In those years, the Record essentially was a hand-written
17 (sometimes typed) summary of highlights in the trial without a written transcript to which
18 American litigators are accustomed. The current *APK* requirement for more complete
19 Records are quite familiar to American trial attorneys.

20 82. On the other hand, Reference-Informational Work takes most American
21 lawyers by surprise. Section Forty-Five describes research by staff using all available
22 pleadings, motions, decisions, and records to extrapolate and certify pronouncements that may
23 not literally appear in a court decision (*reshenie*), determination (*opredelenie*) or ruling
24 (*postanovlenie*).

25 VI. Factual Background of the Gofman Lawsuit

26 83. From the documents presented, Messrs. Itkin and Sabadash memorialized
27 and/or established a Simple Partnership by an agreement on 12 February 2004. I have
28 reviewed this agreement both in Russian and in an English translation. The document is not
29 titled “Agreement” but “Minutes of the Meeting of Partners of Simple Partnership ‘Itkin &
30 Sabadash’” in both Russian and English.

31 84. Paragraph Four of this instrument declares that disputes and disagreements

1 should be resolved through negotiation, if possible. If not, then: “Parties agree to resolve their
2 disputes in the United States court system, under California law.”

3 85. As it happens, Chapter 55 of the RF Civil Code (*Grazhdanskii Kodeks – GK*)
4 governs Russian Simple Partnerships. At one point in the Russian *Arbitrazh* appellate courts,
5 Mr. Sabadash invoked *GK* Articles 1041 through 1047 in support of his contention that the
6 trial court judgment did effectively affect his rights and duties to give him procedural
7 authority to appeal the lower court judgment. This matter is discussed below, but an important
8 contrast with the American “paradigm” is highlighted by Mr. Sabadash’s argument. The
9 Russian appellate courts rejected Mr. Sabadash’s contention on the basis of prior Plenum
10 Resolutions by the High *Arbitrazh* Court.

11 86. Moreover, Paragraph Four of the agreement at issue states the intention of the
12 parties to be governed by California law. It appears that both parties signed the document,
13 Sabadash using the Latin alphabet while the signature of Itkin may be English or Cyrillic.

14 87. On 12 February 2004 Messrs. Itkin and Sabadash, partners in the Simple
15 Partnership, executed an “Information Services Agreement (hereinafter – the Agreement)” as
16 “Client” with Elena Nikolayevna Gofman (née Vasilyeva), a registered individual
17 entrepreneur, as “Contractor.” The Agreement is signed by all parties. The Simple Partnership
18 seal is impressed on each of the three pages, with initials of the partners on the first two pages
19 and signatures on the final page. The signature of Ms. Gofman appears on all three pages.

20 88. The Agreement contemplated provision of legal and tax advice by Ms.
21 Gofman (as “Contractor”) to the Simple Partnership (as “Client”) during calendar years 2004,
22 2005 and 2006. Monthly during those years, the Contractor was to provide written reports of
23 services performed. At the conclusion of each year, the parties would jointly issue and sign a
24 “Service Delivery Report [hereinafter – Report(s)]” declaring that all services were duly
25 performed and that the Client owed the agreed annual price of 200,000 rubles. Under
26 Paragraph Six of the Simple partnership Agreement, Itkin was authorized to conduct day-to-
27 day operations of the Simple partnership. The three annual reports were duly accomplished
28 and bore the signature of Ms. Gofman and the Simple Partnership seal with Mr. Itkin’s
29 signature executed over it. I have reviewed the Agreement and the annual Reports in both
30 Russian and English.

31 89. Apparently, the Simple Partnership defaulted in its payments. Ms. Gofman

1 brought action in the *Arbitrazh* Court for the City of Moscow to recover the defaulted
2 payments together with penalties contemplated by Paragraph 4.6 of the Agreement. Russians
3 do not caption their cases in the same manner as Americans. Thus, the Russian case – Gofman
4 versus Itkin and Sabadash Simple Partnership – is simply entitled the “Gofman case” in this
5 Declaration.

6 90. The RF Civil Code (GK) contemplates 26 so-called “nominate” contracts for
7 which the Code prescribes certain required terms and allows others at the discretion of the
8 parties. The agreement between the Simple Partnership and Ms. Gofman is governed by *GK*
9 Chapter 39 (Compensated Provision of Services). Paragraph 2.3 of the Agreement reflects *GK*
10 Articles 779(1) and 781. Upon a failure of the Simple Partnership as “Client” to pay for
11 services rendered and accepted under the annual Reports, Ms. Gofman would have a right to
12 bring an action for recovery.

13 91. The *APK* delineates the competence of *Arbitrazh* courts in several provisions.
14 Section (2) of *APK* Article 27 declares that *Arbitrazh* courts shall resolve economic disputes
15 with “citizens who are conducting entrepreneurial activities without forming a juridical person
16 and having the status of individual entrepreneur acquired in the procedure established by
17 statute.” *GK* Article 23 governs entrepreneurial activity of citizens. Section (1) declares that
18 the status of “individual entrepreneur” is acquired by State registration.

19 92. *APK* Article 248 declares that exclusive competence vests in the *Arbitrazh*
20 courts in cases involving foreign persons. As indicated in the Simple Partnership Agreement,
21 Mr. Itkin was an American citizen possessing a United States Passport, issued in August
22 1997. The status of the parties clearly justified commencing the Gofman case in the *Arbitrazh*
23 court. Moreover, *APK* Article 247 included several additional reasons for competence to vest
24 in *Arbitrazh* courts: location of defendant’s property in the Russian Federation under
25 Section(1)[1]; and performance taking place in the Russian Federation under Section (1)[3].

26 93. Finally, Paragraph 5.2 of the Agreement states that disputes between the parties
27 shall be considered by a court in Moscow. While Paragraph 5.2 does not specifically refer to
28 *Arbitrazh* courts, the *APK* provisions cited above would indicate that the proper forum, under
29 *APK* Article 249, would be the *Arbitrazh* Court for the City of Moscow. Thus, the stage was
30 set for filing the Gofman lawsuit in that court.

31 VII. Proceedings in the Gofman Lawsuit

94. The following description of the Gofman case has been assembled using the actual court judgment whether a Decision (*Reshenie*), Determination (*Opredelenie*) or Ruling (*Postanovlenie*). Together with these judgments, this description also draws upon the Certificates (*Spravki*) prepared by the court staff in accordance with *VAS* Plenum Resolution No. 100 (25 December 2013). These documents have been reviewed in Russian and in English translation. (As appropriate, corrections to and notes on a translation are added to the discussion.)

A. The Arbitrazh Court for the City of Moscow

95. On 12 September 2018, the *Arbitrazh* Court for the City of Moscow conducted a hearing on the lawsuit of Elena Gofman for recovery under the Information Services Agreement (hereinafter – the Agreement) executed by the Simple Partnership “Itkin & Sabadash” on 12 February 2004. The text of the court Decision (*Reshenie*) was issued on 14 September 2018.

96. In construing the Agreement, the Decision invoked RF Civil Code (*GK*) Articles 779 and 781 governing contracts for compensated provision of services and *GK* Articles 309 and 330 governing “Obligations.” At the conclusion of the “explanatory” (*motivirovochnaya*) part of the Decision, the court cited provisions from *GK* Chapter 51 (“Contract of Commission”) for reasons that are unclear but may be included in the Record of the court session.

97. On 18 October 2018, Plaintiff Gofman requested information from the Court. On 24 October 2018, the Department (*Otdel*) of Record Management prepared an untitled response signed by its Deputy Director, N.A. Sotnich.⁴

98. This document commenced with a description of *VAS* Plenum Resolution No. 100 (25 December 2013) and its “Instructions.” The text of the document does not, however, contain any specific information on the case or the court’s Decision. Instead, it recites the requirements of *APK* Chapter 12 on court notifications.⁵

⁴ The English translation refers to the Department of Case Management, which is one of the possible choices for rendering *deloproizvodstvo* as noted above (p. 9) in discussion of *VAS* Plenum Resolution No. 100 (25 December 2013). As explained above, this Declaration uses the translation “Record Management.”

⁵ In discussing *APK* Articles 121 and 123, the translation describes the “first legal action” in a case is “relevant party’s decision” on accepting the complaint and opening a case. Actually,

99. That Court found in favor of Ms. Gofman and issued the equivalent of what we here would consider a “judgment” in her favor.

B. The *Arbitrazh* Court for the City of Moscow

100. On 3 July 2019, A.V. Sabadash submitted a Motion to Extend the Time for Appeal and an Appeal to the Ninth *Arbitrazh* Appellate Court. Under *APK* Article 259(1), the deadline for filing an appeal from judgment of a first instance court is one month. Thus Sabadash was required to seek an extension of the deadline.

101. In both the Motion to Extend and the Appeal,⁶ Sabadash denied the existence of a partnership between himself and Itkin. The translation of these documents requires a slight, but important, correction which is set forth below.⁷

102. The Ninth *Arbitrazh* Appellate Court conducted a hearing on 10 September 2019 and issued a text of its Determination on 12 September. The Court considered and rejected Sabadash’s argument on appeal that the trial court Decision effected his rights and duties thereby qualifying him to challenge the Decision. Sabadash’s appeal invoked *GK* Articles 1041 and 1047, from Chapter 55 on Simple Partnerships to support his contention that the court Decision “touched” his rights and duties. Sabadash’s argument relied upon a “test” which was at odds with the “test” articulated by 2009 *VAS* Plenum Resolution No. 36 (28 May 2009) discussed below.

the Russian text describes the **court’s** determination (*opredelenie*), not a decision by a party. Court review and court options are described in *APK* Chapter 13, as noted above.

⁶ The English translation of Sabadash’s Motion for Extension and Appellate Petition refers to “Itkin and Sabadash” as a “General Partnership” when actually the Russian text describes “Itkin and Sabadash” as a “Simple Partnership” (*Prostoe Tovarishchestvo*). Likewise, the translation also renders the phrase “the conclusion of a Simple Partnership Agreement” as “the existence of a Simple Partnership Agreement.”

⁷ The second page of Sabadash’s Motion for Extension in English translation complained that the Determination “imputes a part” of the partnership to Sabadash. The actual Russian *pripisyvaetsya uchastie* would be more accurately rendered as “imputes participation [to Sabadash]” which could be an allusion to his signing the Simple Partnership and Agreement with Gofman. Sabadash denied any such “participation.” Similarly, in numbered paragraph (3) on the fourth page of the English translation of Sabadash’s Appeal, the same Russian clause *pripisyvaetsya uchastie* is translated “is said to be a part” of the partnership. However, the clause *pripisyvaetsya uchastie* is more accurately rendered as “imputes participation [to Sabadash]” which could be an allusion to his signing the Simple Partnership and Agreement with Gofman. Sabadash denied any such “participation.”

1 103. In its Determination,⁸ the Court found that neither the “dispositive”
2 (*rezolyutivnaya*) nor the “explanatory” (*motivirochnaya*) parts of the trial Court Decision
3 contained any reference (*ukazanie*) to the rights and duties of Sabadash. Invocation of **GK**
4 Chapter 55 in Sabadash’s appellate petition failed to establish any nexus between the
5 Decision and his rights and duties. In this portion of the Determination, the Court held that
6 neither concluding (*zaklyuchenie*) a Simple partnership Agreement nor having an interest in
7 the outcome of the case supplied the necessary nexus.⁹

8 104. Based on the foregoing, the Court cited Paragraph Two of 2009 **VAS** Plenum
9 Resolution No. 36 (28 May 2009) as mandating termination of an appeal proceeding and
10 return of an appellate petition to the party filing it, even after acceptance of the petition by an
11 **Arbitrazh** court, when it is found that an appellant did not have the right to appeal.

12 105. On 6 August 2020, the Ninth **Arbitrazh** Appellate Court issued an
13 “Informational Certificate” (*Informatsionnaya Spravka*) in response to a request. This
14 Informational Certificate began by citing 2013 **VAS** Plenum Resolution No. 100 (25
15 December 2013) with its voluminous “Instructions” which are discussed in some detail above.
16 Those “Instructions” govern the generation of such Certificates by the Reference-
17 Informational (*Spravochnaya- Informatsionnaya*) staff. The Certificate was signed by Oleg
18 Grigor’evich Mishakov, the Deputy Presiding Judge of the Ninth **Arbitrazh** Appellate Court .

19 106. This Certificate recounted the entire history of the Gofman case as it moved
20

21 ⁸ The title of the Russian document is a Determination (*Opredelenie*) not a Ruling
22 (*Postanovlenie*). Sabadash was seeking standard appellate review which would be subject to a
23 Ruling (*Postanovlenie*). **APK** Article 265(3), however, states that termination of an appellate
24 review shall be accomplished by a Determination (*Opredelenie*). At the conclusion of the
25 determination, the statement “Rules as Follows” should read “Has Determined.” Additionally,
26 the English translation of this Determination provides introductory information listing the panel
27 of judges: B.S. Veklich (Presiding Judge); B. P. Garmayeva and T.Yu. Levina. The Record
28 (*Protokol*) of the court session was assembled by E.N. Kozin, whose title is translated “Court
29 Clerk.” The actual Russian phrase in **APK** Article 155(3) describing this person is “Secretary of
30 the Court Session.” “Court Clerk” is an acceptable rendering, but misses the precision that
31 characterizes Russian legal writing.

32 ⁹ In the first paragraph of its findings, the Court described the Decision of the **Arbitrazh**
33 Court for the City of Moscow as “a legally enforceable decision (*vstupivshii v zakonnyu silu*).
This adjectival phrase has juridical significance. In a normal appeal under **APK** Article 257(1)
appellate review (which is a *de novo* review of evidence) applies only to decisions that have not
taken effect or “entered into legal force.” Cassational review under **APK** Chapter Article 273(1)
and Supervisory review under **APK** Chapter Article 308.1(1) both pertain to decisions that have
entered into legal force.

1 through the *Arbitrazh* Court for the City of Moscow, the Ninth *Arbitrazh* Appellate Court,
2 the *Arbitrazh* Court for the Moscow Circuit, and the Judicial Collegium on Economic
3 Disputes of the RF Supreme Court. The document reflects substantial work by the staff of the
4 Ninth *Arbitrazh* Appellate Court.

5 107. I have reviewed the Certificate in Russian and in English translation. In light
6 of all documents that I have reviewed, the Russian version of the Certificate provides a
7 complete and accurate account of the Gofman case.

8 108. Unfortunately, the English translation contains some errors that require
9 correction. Throughout the translation, the Simple Partnership “Itkin and Sabadash” is called
10 a “General Partnership” which is contrary to all the Russian documents. In a paragraph
11 commencing with “On September 10, 2019...,” the Certificate translation states that the
12 “appellate complaint [sic]” was dated September 14, 2018. In the Russian version of this
13 paragraph, no date is shown for filing of Sabadash’s appeal. It should be added that the
14 Russian phrase *apellyatsionnaya zhaloba* can be translated “appellate complaint” but
15 “appellate petition” is more frequently used, even though *zhaloba* literally means
16 “complaint.”

17 **C. The *Arbitrazh* Court for the Moscow Circuit**

18 109. On 14 October 2019, Sabadash filed a cassational petition in the *Arbitrazh*
19 Court for the Moscow Circuit seeking revocation of the Determination and remand to the
20 Ninth *Arbitrazh* Appellate Court for new consideration. The petition was accepted, and a
21 court session was conducted on 7 November 2019. At the conclusion of the court session, the
22 Court issued only the dispositive part of the Ruling (*Postanovlenie*) which left the
23 Determination of the Ninth *Arbitrazh* Appellate Court without change (*bez izmeneniya*). I
24 have reviewed the Ruling in Russian and in English translation. The English translation,
25 unfortunately incorrectly renders the phrase “without change” as “stayed.”

26 110. On 13 November 2019 the Court issued the full text of its Ruling, which I have
27 reviewed in Russian only. The petition of Sabadash restated the argument that under the RF
28 Civil Code (*GK*) provisions on a Simple Partnership, his rights and duties were directly
29 “touched” by the Determination. Sabadash also argued that a Simple Partnership was not a
30 juridical person and therefore could not have been a party to a lawsuit in the *Arbitrazh* Court
31 for the City of Moscow.

111. The Ruling also noted that the response filed for the Simple Partnership (and Defendant Itkin) had cited a criminal case judgment (*prigovor*) involving Sabadash which was entered on 24 October 2017 by the *Smol'ninskii* District Court in Saint Petersburg which confirmed the existence of "Itkin and Sabadash" Simple Partnership.

112. The fact that the *Arbitrazh* Court for the Moscow Circuit favorably noted the criminal judgment is sufficient grounds to conclude that at least one Russian Court of General Jurisdiction confirmed the existence of the Simple Partnership. The *Smol'ninskii* case is discussed below.

113. The Circuit Court concluded – in accordance with *APK* Articles 284, 286 and 287 (regulating cassational review) – that the Determination by the Ninth *Arbitrazh* Appellate Court correctly applied all relevant material and procedural rules. Moreover, interpreting *APK* Article 42 on appellate rights of persons not participating in a case, the Circuit Court concluded that Sabadash was not entitled to appeal for lack of any basis to conclude that his rights and duties were "touched" or that his claims of a legal interest in the outcome sufficed as bestowing upon him the appellate right. The Circuit Court Ruling essentially followed the "test" established by 2009 *VAS* Plenum Resolution No. 36 (28 May 2009) – described above – without specific citation.

114. On 13 December 2019, in response to an inquiry by Gofman, the Secretariat for the Presiding Judge of the *Arbitrazh* Court for the Moscow Circuit, issued a brief summary of procedures followed in that Court. Basically, the response summarized procedures in the same way as certificates (*spravki*) issued by other *Arbitrazh* courts, including the customary citation of 2013 *VAS* Plenum Resolution No. 100 (25 December 2013). In particular, the response cited Section 41.2.2 of the "Instructions" which governs reception of inquiries from citizens and organization representatives regarding operations of a court.

115. Interestingly, this response included the following passage: "Upon consideration of the claim and establishing a decision (*reshenie*) the [*Arbitrazh*] court verifies the fact of the existence of each of the parties to every claim, which is a prerequisite to [a] legally binding decision (*reshenie*). The indicated establishment of the parties is conducted at the preparation stage of case consideration." The response did not cite *APK* on this "preparation stage." It is governed by *APK* Chapter 14, Articles 133 through 137.

1 116. As described above (p. 18), the Ninth *Arbitrazh* Appellate Court issued its own
2 certificate on 6 August 2020 which also contains a detailed account of this stage in the
3 Gofman litigation. This certificate accurately captured the essential facts and need not be
4 further discussed here.

5 **D. The 2017 judgment of the Smol'ninskii Court of General Jurisdiction**

6 117. A digression is required to discuss the RF Criminal Procedural Code (*UPK*) in
7 order to explain the court judgment (*Prigovor* – “Sentence”) in the *Smol'ninsky* case. Article
8 47(2) of the RF Constitution declares that jury trials of criminal cases are limited to crimes
9 specified by statute. *UPK* Articles 30 and 31 identify the criminal cases in which a defendant
10 may apply for trial by jury. Most criminal cases are tried to a single judge, although a number
11 of crimes may be tried by three-judge panels.

12 118. In a Russian criminal case, the Record (*Protokol*) of the court session plays the
13 same role as the Record created under the *APK*. The text of a court decision may fill hundreds
14 of pages, because the trial court summarizes all the evidence – live testimony, testimony
15 found in investigative records, identification and description of tangible and documentary
16 evidence – and sets forth the court findings on each item.

17 119. These lengthy texts constitute the court findings of fact and law. By contrast,
18 the typical American criminal case concludes with a general jury verdict on the basis of which
19 the court either deems the defendant “not guilty” or imposes a sentence according to the
20 offense charged and with respect to which the jury has found the defendant “guilty.”

21 120. In Criminal Case No. 1-153/2017, Judge Yuliya Vladimirovna Kotenova of the
22 *Smol'ninskii* District Court of General Jurisdiction issued a judgment (*Prigovor*) on 24
23 October 2017 which found Defendant Sabadash guilty of Swindling under Article 159 of the
24 RF Penal Code (*UK*) along with two co-defendants, Somov and Garkusha who were both
25 senior officers of the *Tavricheskii* Bank, an Open Stock Company (*OAO*). The gravamen of
26 the prosecution was a series of fraudulent transactions by which the Bank extended credits
27 and transferred money to entities controlled by Sabadash and others. Several of the properties
28 described in the testimony are also included in the February 2004 “Information Services
29 Agreement” between the Simple Partnership “Itkin and Sabadash and Gofman. They are:
30 Open Joint Stock Company [*OAO*], “Vyborgskaya Celluloza”[sic], Closed Joint Stock
31 Company [*ZAO*] “LIVIZ,” and Open Joint Stock Company [*OAO*] “LIVIZ.”

1 121. The judgment is 110 pages long. In it, the judge summarized the testimony of
2 23 individual witnesses (pp. 16-39). A number of witnesses mentioned Garry Yu. Itkin by
3 name: A.N. Filip'eva (p. 16); E.A. Voyt (pp. 29-31); M.Yu. Glazova (pp. 31-32); N.V.
4 Aleksandrov (p. 32); A.Yu. Vorob'ev (p.32); P.L. Basistyi (p. 33); Yu.A. Sneshko (pp. 33-
5 34); K.V. Arsent'ev (pp. 34-37); T.S. Lobanova (p. 37-39); and S.V. Grekova (p. 39-40).

6 122. Most of the references to Garry Yu. Itkin pertained to his leadership role in the
7 companies discussed. However, several witnesses characterized the relationship between
8 Itkin and Sabadash as long-standing and business-related. Witness Basistyi considered Itkin
9 to be a “partner (*kompan'on*)” of Sabadash (p. 33). [The Russian word *kompan'on* can mean
10 a “partner” in a business sense but it can also mean “companion,” “associate,” “affiliate” even
11 “consort.” Witness Sneshko described Itkin as a “business partner (*partnyor*) of Sabadash (p.
12 33). Witness Lobanova characterized Itkin as a “long-time acquaintance and partner
13 (*kompan'on*) (p. 38). Witness Grekova described Itkin as both a “business partner (*partnyor*)
14 and companion (*kompan'on*)” (p. 39).

15 123. The court explicitly rejected the defendants’ attacks upon the above-listed
16 witnesses, finding that all the defendants had been warned against the Russian equivalent of
17 “perjury” or evasion under Penal Code (*UK*) Articles 307 and 308 (p. 84). Moreover, the
18 court detected no animosity on the part of the witnesses with regard to the defendants nor any
19 personal interest in the outcome of the case (p. 84).

20 124. The existence of “Itkin and Sabadash” as a Simple Partnership was not an issue
21 that was essential to the *Smol'ninskii* judgment of “guilt” with regard to Defendant Sabadash
22 and his co-defendants. Nevertheless, under the standards of “correct application” and
23 “comprehensive and complete investigation,” the court judgment included the testimony
24 discussed above and in effect confirmed a long-standing business relationship (and friendship)
25 between Messrs. Itkin and Sabadash.

26 **E. Judicial Collegium on Economic Disputes of the RF Supreme Court**

27 125. The final step in pursuit of remand by Sabadash was a cassational petition to
28 the Judicial Collegium on Economic Disputes of the RF Supreme Court filed the same day as
29 the full text of the Ruling by *Arbitrazh* Court for the Moscow Circuit (13 November 2019).
30 On 13 March 2020, Judge Natalia C. Chuchunova, member of the Panel on Contract Disputes
31 in the Judicial Collegium on Economic Disputes of the RF Supreme Court issued a

1 Determination (*Opredelenie*) denying and returning the petition by Sabadash. I have reviewed
2 the Determination in Russian. It contains a full recital of the grounds for returning the petition
3 (which are described above on page 12).

4 126. On 9 December 2019, Elena Gofman filed an application to the Judicial
5 Department of the RF Supreme Court. On 13 December 2019, a response was sent by the
6 Directorate for Support of *Arbitrazh* an Specialized Courts signed by O.V. Yakubvoskii,
7 Acting Head of the Directorate which recited the statutory provisions governing cassational
8 review of lower court decisions found in the Civil Procedural Code (*GPK*).

9
10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed on June __, 2021 in Columbia, South Carolina.

13
14 
15 RONALD CHILDRESS

EXHIBIT 1

Ronald M. Childress - Curriculum Vitae

U.S. District Court of South Carolina. (October 2000 through July 2006)

As staff attorney, reviewed cases and drafted Magistrate Judge Reports & Recommendations on petitions for habeas corpus relief, prisoner civil rights actions, appeals from Social Security administrative rulings and actions for employment discrimination. Also wrote and presented materials for Continuing Legal Education (CLE) seminars sponsored by the Court.

Defense Intelligence Agency (DIA), Washington, D.C. (January 1997 – October 2000)

April 1999 – October 2000 - Analyst of Russian Defense Production
December 1998 – April 1999 - Office of Inspector General, DIA, lead inspection of Foreign Materiel Program
January – August 1998 – Assistant Air Attache, U.S. Embassy, Moscow, filling vacancy for seven months
June – December 1997 – Deputy for Operations, Foreign Liaison Division, responsible for liaison with all foreign military attaches in Washington, D.C., and other high level military contacts

Director, Rule of Law Consortium, Moscow, Russia (January 1995 – December 1996)

Managed and directed six million dollar program of technical and material assistance to Russian Federation commercial courts, courts of general jurisdiction, prosecutor training institutions, law schools, and non-governmental organizations in support of legal reform. American-Russian staff of approximately ten individuals used the Russian language in daily office operations.

Director of Research, Project ROSCON, Moscow, Russia (March 1993 – December 1994)

Introduced Russian sociologists to social marketing and audience research; tested and evaluated media products with Russian audiences; established wide academic, media and governmental network of professional contacts in Russia; used Russian and German language skills to extend networks to Western and Eastern Europe. Supervised Russian research staff using Russian as operational language.

County Attorney, Richland County, South Carolina (June 1991 – January 1993)

Appointed upon demobilization following OPERATION DESERT STORM, assisted County Administrator and Council to eliminate six million dollar deficit by reducing legal department budget by fifty percent, while increasing efficiency, and identifying new, non-tax

revenues; corrected major deviations from constitutional and statutory law in Richland County government, drafted opinions and ordinances, and represented County Council in wide variety of litigation.

Mobilized as Major, US Air Force Reserve (January 1991 to May 1991)

Led a USAF interrogation contingent during OPERATION DESERT STORM; maintained morale under tense and stressful conditions at a field camp near the Iraqi border; motivated subordinates and peers to focus energies on the mission; nearly 400 reports were written in a few weeks. Returning to Washington, DC, wrote after-action reports prior to demobilization in May 1991.

Attorney in private practice, Columbia, S.C. (March 1984 to January 1991)

Law Clerk – Chief Justice J. Woodrow Lewis, S.C. Supreme Court (March 1981 to March 1984)

Associate – Rogers, McDonald, McKenzie, Fuller and Rubin, Columbia, SC (1979-1981)

Law School & Teaching USC GINT, Lifelong Learning Division (1976-1987)

Graduate School (Resident) & Teaching Fellow, Harvard University (1971-1975)

Active Duty, U.S. Air Force (1967-1971) Republic of Vietnam, Washington, DC, other locations

Education

Ph.D., Government, Harvard University, 1978

J.D., University of South Carolina, 1978

M.A., Government, Harvard University, 1975

B.A., Government, Cornell University, 1967, Magna cum Laude

Military Experience

Commissioned Second Lieutenant in U.S. Air Force, June, 1967. Active Duty from 1967-1971. U.S. Air Force Intelligence Reserve (AFIR): various assignments within HUMINT specialty, including Attache assignments (US Embassy, Bonn, Germany, and US Embassy, Moscow, RF). Retired in June, 1999, with rank of Colonel.

Language Experience

Since 1989, served as interpreter for high level US-USSR/Russian governmental, commercial and military exchanges; trained other Air Force reservists for interpreter duties supporting arms control treaty verifications.

Employed knowledge of German language in Air Force reserve activities and also in writing a doctoral dissertation on Friedrich Nietzsche, researching his works in the original German, pointing out shortcomings in previous translations.

Teaching Experience

Currently teach Law 691 (Law and Legal System of the Russian Federation) at the University of South Carolina Law School as Adjunct Professor.

For twelve years (1976-1987), taught evening courses in political science for University of South Carolina; distilled and communicated complicated concepts of political philosophy and international relations, in a practical way to inform and hold the interest of mature students.

Personal

DOB: 13 September 1945
POB: Tallahassee, Florida
Married to Susan A. Childress
Two sons: Andrew and David

Contact: 7033 Glengarry Drive, Columbia, S.C. 29209 Phone: (803) 776-8567
[email:<ronmcesquire@gmail.com>](mailto:ronmcesquire@gmail.com)

EXHIBIT 2

Log of Materials Reviewed

(A) Judgments entered in the Gofman lawsuit:

- (1) Full text of the Decision (*Reshenie*) of the *Arbitrazh* Court for the City of Moscow (14 September 2018) in Case No. A40-165165/18 140/4254 (Russian text and English translation).
- (2) Enforcement Order of the *Arbitrazh* Court for the City of Moscow (15 October 2018) in Case No. A40-165165/18 140/4254 (Russian text only).
- (3) Motion (*Khodataystvo*) to Extend the Time for Appeal filed on behalf of A.V. Sabadash in the Ninth *Arbitrazh* Appellate Court on 3 July 2019 in Case No. A40-165165/18 (Russian text and English translation).
- (4) Appeal (*Apellyatsionnaya Zhaloba*) filed on behalf of A.V. Sabadash in the Ninth *Arbitrazh* Appellate Court on 3 July 2019 in Case No. A40-165165/18 (Russian text and English translation).
- (5) Full text of the Determination (*Opredelenie*) of the Ninth *Arbitrazh* Appellate Court (12 September 2019) in Case No. 09AP-43744/2019–GK (trial court Case No. A40-165165/18) (Russian text and English translation).
- (6) Cassational Appeal (*Kassatsionnaya Zhaloba*) filed on behalf of A.V. in the *Arbitrazh* Court of the Moscow Circuit (*Okrug*) on 11 October 2019 in Case No. A40-165165/18 (Russian text and English translation).
- (6) Full text of the Ruling (*Postanovlenie*) of the *Arbitrazh* Court of the Moscow Circuit (*Okrug*) (13 November 2019)
- (5) Full Text of the Determination (*Opredelenie*) of the RF Supreme Court Collegium on Economic Disputes in Case No. 305-ES20-464 (trial court Case No. A40-165165/2018 (Russian text and English translation).

(B) Criminal Case No. 1-153/2017 – Guilty Judgment (*Prigovor*) of the Smol’ninskiy District Court entered by Presiding Judge Yu. V. Koteneva on 24 October 2017 against Defendants A.V. Sabadash, S.A. Somov and D.V. Garkusha charged with violation of the RF Penal Code (*Ugolovnyi Kodeks*) Article 159(4). (Russian text with limited excerpts in English translation).

(C) Plenum Resolutions of the RF Highest *Arbitrazh* Court (abbreviated *VAS* in Russian) (Reviewed in Russian text only.)

- (1) 2009 *VAS* Resolution No. 36 (28 May).
- (2) 2009 *VAS* Resolution No. 61 (23 July).
- (3) 2011 *VAS* Resolution No. 12 (17 February).
- (4) 2011 *VAS* Resolution No. 30 (24 March).
- (5) 2012 *VAS* Resolution No. 43 (12 July).
- (6) 2013 *VAS* Resolution No. 100 (25 December).
- (7) 2014 *VAS* Resolution No. 48 (11 July).
- (8) 2014 *VAS* Resolution No. 49 (11 July).

(D) Plenum Resolutions of the RF Supreme Court (abbreviated *VS* in Russian). (Reviewed in Russian text only.)

- (1) 2020 Supreme Court (*VS*) Resolution No. 12;(30 June).
- (2) 2020 Supreme Court (*VS*) Resolution No. 13 (30 June).

(E) Informational Certificates.

- (1) Certificate of the Record Management Department of the *Arbitrazh* Court for the City of Moscow issued on 24 October 2018 signed by N.A. Sotnich. (Russian text and English translation)
- (2) Informational Certificate issued on 6 August 2020 and signed by O.G. Mishakov, Deputy Presiding Judge of the Ninth *Arbitrazh* Appellate Court. on 6 August 2020. (Russian text and English translation.)
- (3) Untitled Certificate issued on 13 December 2019 by the Secretariat for the Presiding Judge of the *Arbitrazh* Court for the Moscow Circuit. (Russian text and English translation.)
- (4) Untitled Certificate issued on 12 December 2019 by the Judicial Department of the RF Supreme Court and signed by O.V. Yakubovskii, Acting Head of the Directorate for Support of *Arbitrazh* and Specialized Courts

(F) Documents of the Parties

- (1) Agreement of partners to establish “Itkin and Sabadash” Simple Partnership (12 February 2004). (Russian text and English translation.)
- (2) “Information Services Agreement” between “Itkin and Sabadash” Simple Partnership and E.N. Vasilieva (12 February 2004). (Russian text and English translation.)

(G) The RF *Arbitrazh* Procedural Code (*APK*). (Russian text only.)

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 515 South Flower Street, 7th Floor, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF ORDER DISMISSING INVOLUNTARY CASE [DOCKET NO. 76] AND MEMORANDUM OF DECISION [DOCKET NO. 75]; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF GARRY Y. ITKIN, ELENA GOFMAN, DANIEL J. MCCARTHY AND RON CHILDRESS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 1, 2025, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Joseph E Caceres jec@locs.com, generalbox@locs.com
Daniel J McCarthy dmccarthy@hillfarrer.com, spadilla@hillfarrer.com; dflowers@hfbllp.com
Kurt Ramlo Adam RamloLegal@gmail.com, kr@ecf.courtdrive.com, ramlo@recap.email
Charles Shamash cs@locs.com, generalbox@locs.com
Oleg Stolyar astolyar@loeb.com
United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
Michael Zorkin on behalf of Partner Alexander Sabadash mz@thezorkinfirm.com

☐ Service information continued on

attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) July 1, 2025, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

United States Trustee
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017

☐ Service information continued on

attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 1, 2025
Date

Sonia Padilla
Printed Name

/s/ Sonia Padilla
Signature